

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: EAST PALESTINE ) CASE NO.  
5 TRAIN DERAILMENT ) 4:23-CV-00242-BYP  
6 ) JUDGE BENITA Y. PEARSON

7 WEDNESDAY, JANUARY 24, 2024

8 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

9 - - -

10 Videotaped deposition of John  
11 Andrew McCarty, in his personal capacity and  
12 as 30(b)(6) designee for Specialized  
13 Professional Services, Inc., held at the  
14 offices of Dentons Cohen and Grigsby, 625  
15 Liberty Avenue, Fifth Floor, Pittsburgh,  
16 Pennsylvania, commencing at 9:12 a.m.  
17 Eastern, on the above date, before Carrie A.  
18 Campbell, Registered Diplomate Reporter,  
19 Certified Realtime Reporter, Illinois,  
20 California & Texas Certified Shorthand  
21 Reporter, Missouri, Kansas, Louisiana & New  
22 Jersey Certified Court Reporter.

23 - - -

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5         CHARLES STOCKHAUSEN,  
6         Golkow Litigation Services

7                     - - -

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1 VIDEOGRAPHER: We are now on  
2 the record. My name is Charles  
3 Stockhausen, and I am the videographer  
4 with Golkow Litigation Services.

5 Today's date is Wednesday,  
6 January 24, 2024, and the time is  
7 9:12 a.m.

8 This video deposition is being  
9 held at 625 Liberty Avenue, Fifth  
10 Floor, Pittsburgh, Pennsylvania 15222,  
11 In Re of East Palestine Train  
12 Derailment, for the United States  
13 District Court, Northern District of  
14 Ohio, Eastern Division.

15 The deponent is Drew McCarty.

16 Counsel will be noted on the  
17 stenographic record.

18 The court reporter is Carrie  
19 Campbell, and she will now swear in  
20 the witness.

21 JOHN ANDREW MCCARTY,  
22 of lawful age, having been first duly sworn  
23 to tell the truth, the whole truth and  
24 nothing but the truth, deposes and says on  
25 behalf of the Plaintiffs, as follows:



1 MR. HANSON: Here on behalf of  
2 SPSI and Drew McCarty, Morgan Hanson  
3 from Dentons.

4 MS. THURSTON: Alexis Thurston  
5 for Drew McCarty and SPSI, also from  
6 Dentons.

7 MR. HANSON: Oh, I'm sorry.  
8 Okay. I didn't realize. Sorry.

9 All right. So as we just  
10 discussed among counsel, Mr. McCarty  
11 is today being deposed pursuant to a  
12 subpoena in his personal capacity. He  
13 would be the 30(b)(6) witness for  
14 tomorrow's deposition as well, given  
15 his status as president and owner of  
16 SPSI.

17 We have collectively agreed  
18 that any question and answer provided  
19 by Mr. McCarty today will also be  
20 binding upon SPSI, in an attempt to  
21 streamline this and make sure that  
22 there's no confusion as to the need to  
23 reask questions that have been  
24 previously asked to Mr. McCarty  
25 individually for SPSI.

1                   We are not in any way  
2                   attempting to limit any party's rights  
3                   to ask questions or utilize the time  
4                   allotted to them under either  
5                   subpoena.

6                   And with that, unless there are  
7                   any objections, I turn it over to you,  
8                   Mr. Gomez.

9                   MR. GOMEZ: Thank you, Counsel.

10                  And one more point of order.  
11                  It's my understanding that the parties  
12                  have agreed that an objection by one  
13                  party is an objection preserved for  
14                  all. If that's incorrect, please  
15                  speak up. But that's my understanding  
16                  that's our agreement before we went  
17                  on the record.

18                  Thank you again.

19

20                  DIRECT EXAMINATION

21                  QUESTIONS BY MR. GOMEZ:

22                  Q.       Good morning, sir.

23                  A.       Good morning.

24                  Q.       Can you state and spell your  
25                  name for the record?

1           A.       John Andrew McCarty. Everyone  
2       calls me Drew. J-o-h-n, A-n-d-r-e-w,  
3       M-c-C-a-r-t-y.

4           Q.       Mr. McCarty, you're currently  
5       employed by Specialized Professional  
6       Services, Inc.

7                   Is that correct?

8           A.       That's correct.

9           Q.       And for shorthand, that's SPSI?

10          A.       Yes.

11          Q.       Your position is the owner and  
12       president.

13                  Is that accurate?

14          A.       That's correct.

15          Q.       I appreciate the comments that  
16       your counsel made at the beginning of the  
17       deposition about how we're going to proceed,  
18       but I just want to confirm through you that  
19       the testimony you're going to give today is  
20       both the testimony in your personal capacity  
21       and as the representative for SPSI.

22                  Correct?

23          A.       Yes, that's correct.

24          Q.       So if you answer the questions  
25       that are presented to you today and tomorrow,

1 we can take that as both you speaking  
2 individually and the company -- and speaking  
3 for the company.

4 Correct?

5 A. Yes, correct.

6 Q. Thank you.

7 Mr. McCarty, you hold a BS in  
8 business administration.

9 Is that correct?

10 A. Yes.

11 Q. And where did you earn that  
12 degree from?

13 A. Kent State University.

14 Q. In what year?

15 A. 1988.

16 Q. And was your focus or major  
17 transportation and logistics?

18 Is that correct?

19 A. Yes, that's correct.

20 Q. In the course of your studies  
21 at Kent State, what, if any, courses did you  
22 take in the field of chemistry?

23 A. I actually did have a college  
24 chemistry course in my undergrad work.

25 Q. Was that a general chemistry

1 course? Organic chemistry? Biochemistry?

2 What --

3 A. Yeah, general chemistry.

4 Q. In that general chemistry  
5 course, was there any discussion or  
6 instruction specific to a chemical called  
7 vinyl chloride monomer?

8 A. Oh, I can't remember. That  
9 would have been 1985, I think.

10 Q. Other than that general  
11 chemistry course, have you had any other  
12 formal education in the area of chemistry?

13 A. Throughout my career, yes.  
14 Even back into high school I had two  
15 chemistry classes in high school. That's why  
16 I took it as an elective in college.

17 But through my career, a lot of  
18 customers, specific classes I've been able to  
19 take on their product-specific stuff.

20 Attended some Street Smart Chemistry-type  
21 programs, one at Pueblo, Colorado, one  
22 internally through some old DuPont guys that  
23 taught it.

24 So, yeah, there's been industry  
25 education along my 35-year career.

1           Q.       Okay. Setting aside the  
2 industry education, is there any formal  
3 chemistry education beyond what we've already  
4 discussed at an institution of higher  
5 learning, like a university or a college  
6 or --

7           A.       No.

8           Q.       -- a trade school?

9           A.       No.

10          Q.       Am I correct that at some point  
11 in your career you attended firefighter  
12 academy or firefighter school?

13          A.       Yeah, I've been a firefighter  
14 since I was 14 years old.

15          Q.       And forgive me for asking, but  
16 approximately how long ago was that?

17          A.       Oh, dating myself.  
18 1980-ish.

19          Q.       And understanding that it's  
20 roughly 1980 that you would have attended  
21 that school, what, if anything, do you recall  
22 about specific HAZMAT training that you  
23 received?

24          A.       Well, it's been ongoing since  
25 1980. I mean, it's not just one school.

1 Q. Sure.

2 A. I've literally had hundreds and  
3 hundreds and hundreds of hours of various  
4 schools along my career.

5 Q. Okay. I'm referring to just  
6 the firefighter academy or school.

7 Was there anything specific to  
8 HAZMAT training that you had in 1980-ish?

9 A. Well, the way most firefighter  
10 academies are set up, there's firefighting,  
11 there's rescue, there's HAZMAT, so they're  
12 all compartmentalized training.

13 Q. You mentioned that it's been an  
14 ongoing process of HAZMAT training since  
15 roughly 1980.

16 Can you identify for me from  
17 that period of time or during that period of  
18 time any training or education you've  
19 received specific to the chemical vinyl  
20 chloride monomer?

21 A. Yes.

22 Q. Okay. Can you identify those  
23 trainings?

24 A. Sure.

25 Predominantly with The Chlorine

1 Institute programming.

2 Q. And just as we're going through  
3 today's deposition, instead of saying vinyl  
4 chloride monomer over and over again, can I  
5 abbreviate that to VCM?

6 A. VCM, sure, yeah.

7 Q. We'll understand each other?

8 A. Yes.

9 Q. Approximately how many  
10 trainings or instructional meeting sessions  
11 did you attend over the course of your career  
12 with The Chlorine Institute that were  
13 specific to VCM?

14 A. So The Chlorine Institute does  
15 an annual program in Jackson, Mississippi,  
16 every spring. Sometimes it's April.  
17 Sometimes it's May. It's one of the segments  
18 of that program every year.

19 Q. So within this annual program  
20 put on by The Chlorine Institute, there's a  
21 segment that's devoted to VCM.

22 Is that a fair  
23 characterization?

24 A. Yes.

25 Q. And what are some of the topics



1 that have been covered in this VCM-specific  
2 portion of The Chlorine Institute training?

3 A. It's primary chemical hazards  
4 and -- including polymerization, polymer --  
5 you know, primary hazards, chemical  
6 characteristics, boiling points, expansion  
7 ratios, toxicity, considerations for  
8 emergency response.

9 Q. And when did you first begin  
10 attending The Chlorine Institute's yearly  
11 training where VCM is part of the education?

12 A. Probably in the -- I'm just  
13 generalizing here -- early to mid-'90s.  
14 And -- yeah, that would be about right, early  
15 to mid-'90s.

16 Q. Okay. And if that's yearly,  
17 fair to say roughly 25 to 30 of those  
18 sessions you've attended?

19 A. That would probably be a good  
20 guess on the timeline, yes.

21 Q. Of those 25 to 30 Chlorine  
22 Institute trainings where VCM is a portion of  
23 the instruction, how many of those would you  
24 say have touched upon the subject of VCM  
25 polymerization chemistry?

1 A. Every one of them.

2 Q. And can you identify for me as  
3 best you can who it was that gave specific  
4 training or education during these 25 or 30  
5 sessions on polymerization chemistry of VCM?

6 A. So in the early years, a lot of  
7 the producers would take turns presenting. I  
8 can't remember people's names at this point  
9 in time. But in the last couple of years,  
10 since the Paulsboro, New Jersey, derailment,  
11 I've been delivering that presentation.

12 Q. Paulsboro was 2012, I believe.  
13 Right?

14 A. That sounds right.

15 Q. So for the last 11, 12 years,  
16 you've been providing training at these  
17 Chlorine Institute sessions regarding VCM  
18 polymerization chemistry?

19 A. Yes.

20 Q. Do you have, or have you used,  
21 during the last 11 or 12 years any written  
22 materials in the course of providing  
23 education for polymerization -- for VCM  
24 polymerization chemistry?

25 A. The Chlorine Institute as a

1 group prepares those, and I just present.

2 It's pretty much their material; I deliver  
3 it.

4 Q. Do you participate in preparing  
5 the material?

6 A. Yes.

7 Q. And can you describe for me  
8 what those materials are? For example, are  
9 they PowerPoints --

10 A. It's a PowerPoint presentation,  
11 yes.

12 MR. HANSON: Let's let  
13 Mr. Gomez finish his question so the  
14 record -- and let's not talk over each  
15 other.

16 THE WITNESS: Oh, okay.

17 MR. GOMEZ: I'm as guilty of it  
18 as you are, so my apologies.

19 QUESTIONS BY MR. GOMEZ:

20 Q. And these PowerPoints that we  
21 were discussing, are they updated annually?

22 A. Yes.

23 Q. Do you maintain copies of these  
24 PowerPoints?

25 A. No. Usually I don't. I might

1 have an old one, I might have a recent one,  
2 but Chlorine Institute shepherds all of those  
3 documents.

4 Q. Can you describe for me what  
5 you know of the process whereby The Chlorine  
6 Institute drafts these PowerPoints and other  
7 materials for the presentations you make on  
8 VCM polymerization chemistry?

9 A. I'm not sure -- can you  
10 rephrase your question? I'm not sure if I  
11 understood the question.

12 Q. Sure.

13 If you know, can you walk me  
14 through the process The Chlorine Institute  
15 uses to put together these PowerPoints?

16 Just, for example, do they have  
17 on-staff chemists that prepare the materials  
18 and then they're sent out for edits?

19 I want to get a flavor for what  
20 that process looks like.

21 MR. LEVINE: Objection.

22 THE WITNESS: Yeah, so I'm not  
23 sure I know how they draft them, but  
24 it is, you know, reviewable by a small  
25 committee.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Reviewable by a small committee  
3 before it's ultimately presented?

4 A. Correct.

5 Q. Are you a member of that  
6 committee?

7 A. Yes. If I'm the presenter, I'm  
8 on that -- I'm on that, you know, section.

9 Q. And what disciplines are  
10 represented in that small committee?

11 A. Generally producers, other  
12 responders, Chlorine Institute members on  
13 what they call the EPIT, the emergency  
14 response preparedness issue team.

15 Q. Over the last, just say, 10 to  
16 12 years of doing these presentations on VCM  
17 polymerization chemistry, what have you  
18 personally done to ensure that the  
19 information that you are providing in that  
20 training is accurate?

21 A. It's been accurate. I mean,  
22 the information core is there from the  
23 industry producers; I just deliver it.

24 Q. Okay. So do you do anything  
25 independently to make sure that what you're

1 being provided to present in terms of VCM  
2 polymerization chemistry is, in fact,  
3 accurate?

4 A. Yes. That's what we do by  
5 committee, by group. We all have our --  
6 that's kind of the checks and balances part  
7 of the accuracy of that information, yes.

8 Q. So you're relying on the small  
9 group and the input from the small group to  
10 confirm that the information in those  
11 PowerPoints and in the presentation is true  
12 and correct and accurate.

13 Right?

14 A. It's a team effort, yes.

15 Q. With the understanding that  
16 you've received training over the course of  
17 your career in chemicals and HAZMAT,  
18 including VCM, would you consider yourself a  
19 chemist?

20 A. No.

21 Q. Would you consider yourself a  
22 chemical engineer?

23 A. No.

24 Q. Would you consider yourself a  
25 materials scientist?

1           A.       No.

2           Q.       In the course of responding to  
3 incidents involving hazardous materials over  
4 the course of your career, would you say it  
5 is your practice to consult with chemists?

6           A.       In certain cases, absolutely.

7           Q.       And would that also apply for  
8 consulting in certain cases with chemical  
9 engineers?

10          A.       Yes.

11          Q.       And also for material  
12 scientists?

13          A.       I'm not sure if I understand  
14 the definition of a material scientist versus  
15 a chemical engineer. I'm not sure if I  
16 understand the distinction there.

17          Q.       Sure.

18                    You deal with responding to, in  
19 your industry and in your course of work,  
20 incidents involving derailed tank cars, for  
21 example.

22                    Right?

23          A.       Correct.

24          Q.       And in the course of responding  
25 to those -- to those incidents, is it your

1 practice to, where necessary, consult with  
2 experts in the materials that make up those  
3 tank cars?

4 A. If it's a material that we  
5 don't already have a lot of experience with,  
6 sure, yes.

7 Q. Understanding that each  
8 derailment -- actually, understanding that  
9 each hazardous materials incident is  
10 different, what are some of the conditions  
11 that would prompt you in responding to such  
12 an incident to consult with a chemist?

13 A. I'm sorry, can you ask that one  
14 more time?

15 Q. No problem.  
16 Understanding that each  
17 incident is different, what are some of the  
18 factors that you consider in responding to an  
19 incident before reaching out to a chemist for  
20 advice, technical information or assistance?

21 A. One obvious one comes to mind  
22 is if there's some strange chemical that is  
23 a kind of a one-off chemical that's very a  
24 unique name and title I've never heard of  
25 before, that absolutely is a trigger to get



1     somebody from the producer on the phone and  
2     say, tell me about your product. That would  
3     be probably the main example of something  
4     like that.

5                     I think that answers your  
6     question.

7             Q.     It does. Thank you.

8                     So if I understand you  
9     correctly, to the extent that the chemical  
10    you're dealing with is one that you have  
11    familiarity with, you may not reach out to a  
12    chemist because you have enough understanding  
13    of the product in order to respond.

14                    Is that fair?

15             A.     Correct.

16             Q.     I want to talk a little bit  
17    more about training. You mentioned The  
18    Chlorine Institute.

19                    Is that training as part of an  
20    organization or a group called CHLOREP?

21             A.     That's correct.

22             Q.     And what does CHLOREP stand  
23    for? If you can remember.

24             A.     Well, it is a big acronym, and  
25    I'm -- I don't want to mess it up because

1 it's an oldie but a goody. CHLOR --  
2 emergency preparedness. The EP is emergency  
3 preparedness, I believe. So you'll have to  
4 ask Chlorine Institute to clarify that.

5 Q. But it's part of The Chlorine  
6 Institute.

7 Is that correct?

8 A. Yes, absolutely.

9 Q. There's also a group called  
10 SERTC.

11 Are you familiar with that?

12 A. Yes.

13 Q. Do you know what that stands  
14 for?

15 A. That's the acronym for the --  
16 it was formerly TTCI in Pueblo, Colorado. I  
17 believe it stands for Security and Emergency  
18 Response Training Center, if I'm not  
19 mistaken.

20 Q. And you mentioned Pueblo,  
21 Colorado. Is that where the SERTC training  
22 takes place?

23 A. Yes.

24 Q. Specific to SERTC, over the  
25 course of your career, have you attended

1 training put on by that group particular --  
2 specific to polymerization of monomers?

3 A. Specific to polymerization of  
4 monomers, it would have been part of -- it  
5 was a program delivered when it was called  
6 TTCI before it was called SERTC.

7 A gentleman named Hank Cox  
8 delivered the training. It was a very good  
9 chemistry class, and polymerization was  
10 covered in that class in some detail, yes.

11 Q. And do you recall roughly how  
12 long ago that class would have been put on?

13 A. I don't.

14 Q. More or less than five years  
15 ago?

16 A. It would have been before five  
17 years ago.

18 Q. More or less ten years ago?

19 A. I don't remember. It was -- I  
20 don't remember.

21 Q. Okay. And Mr. Cox, do you know  
22 his credentials, by chance?

23 A. He's a chemist.

24 Q. Is he a, if you know, a chemist  
25 that's employed by a manufacturer? Is he an

1 independent chemist?

2 A. He retired from -- he worked  
3 for a couple of Class I railroads. He  
4 retired from CSX. And he worked as an  
5 instructor at TTCI back in that era.

6 Q. And in the course of Mr. Cox's  
7 class that we've just been discussing, was  
8 there education provided specifically to the  
9 polymerization chemistry of VCM?

10 A. The polymerization section of  
11 that class would have been polymerization as  
12 a broad, not specific to VCM, but would have  
13 covered VCM, butadiene, styrene, TDI and a  
14 bunch of other monomers.

15 Q. So nothing that was specific to  
16 VCM in Mr. Cox's class as best you can  
17 recall?

18 A. As best I can recall, correct.

19 Q. Over the course of your career,  
20 can you estimate for me the number of HAZMAT  
21 incidents that you've responded to where the  
22 polymerization of a monomer has been a  
23 concern that you've had to deal with?

24 A. One noteworthy one jumps out in  
25 my memory. Three butadiene cars in Brooks,

1 Kentucky, were actively polymerizing and were  
2 subject to an emergency de-inventorying with  
3 a liquid flare.

4 Q. Other than that butadiene  
5 incident, are there any other incidents you  
6 can recall where the polymerization of a  
7 monomer was a chief concern in the HAZMAT  
8 response?

9 A. Not that I've personally  
10 responded to as I did in Brooks, Kentucky. I  
11 just know of some other case studies that  
12 have happened.

13 Q. Those case studies that you  
14 just mentioned, can you walk me through which  
15 ones you're referring to?

16 A. Well, another piece of training  
17 I received was from the former Rohm and Haas.  
18 David Ghormley was the monomers response  
19 expert for Rohm and Haas.

20 They had a situation -- and I'm  
21 trying to remember when that would have been.  
22 Late '80s, maybe, but don't quote me on  
23 that -- where they had a monomer react and  
24 plug up and fouled up the pressure relief  
25 device. Ultimately resulted in a

1 catastrophic failure of the car.

2                   There was a response somewhere  
3 near Cincinnati on a styrene car. Behaved  
4 the same way. Plugged up the pressure relief  
5 device.

6                   And I know there was a couple  
7 others that I'm just -- I don't -- I wasn't  
8 part of them so I can't remember or cite the  
9 cases, but...

10           Q.       You mentioned the Cincinnati  
11 incident. The chemical at issue there was  
12 styrene there.

13                   Correct?

14           A.       Yes.

15           Q.       And then the Rohm and Haas  
16 incident, was the chemical involved there  
17 glacial acrylic acid?

18           A.       I don't recall. It was a long  
19 time ago.

20           Q.       In terms of the butadiene  
21 incident in Brooks, Kentucky, can you  
22 generally describe to me what occurred in  
23 that incident that led to a concern about the  
24 polymerization of that monomer?

25           A.       Three butadiene cars were in a

1 pool fire for a sustained amount of time, and  
2 they were showing signs of polymerization.  
3 And command said, get them empty right now,  
4 get them empty before they do their own  
5 thing, and constructed a burn pit, hard-piped  
6 it out and were able to de-inventory them  
7 through a liquid flare operation.

8 Q. And in connection with that  
9 incident, what were the signs being exhibited  
10 that indicated to you that butadiene was  
11 undergoing polymerization?

12 A. Well, in that case, their  
13 valves and fittings were in good condition.  
14 We were able to get -- after the fires had  
15 subsided, we were able to get people in there  
16 with pressure gauges and temperature  
17 thermometers into the thermal wells.

18 And pressure had increased, and  
19 thermometers had in -- the temperatures had  
20 increased, and we actually had access to  
21 those cars that we could actually work on  
22 them.

23 Q. Do you happen to recall what  
24 the temperatures were that were reported?

25 A. No. That was a long time ago.

1           Q.       Switching gears just a little  
2 bit, what, if any, past experience have you  
3 had over the course of your career with  
4 HAZMAT incidents involving a concern for VCM  
5 polymerization, other than the East Palestine  
6 derailment?

7           A.       Well, every time we've ever  
8 handled VCM, there was a high level of  
9 concern for polymerization.

10          Q.       Why is that?

11          A.       Well, according to the producer  
12 we worked for, even the slightest amount of  
13 moisture could trigger it. Any kind of  
14 impurities, any kind of dirty gasket in a  
15 transfer hose, they've told us that it can  
16 trigger polymerization.

17                   What was the question again?  
18 I'm sorry. What was the question? I'm  
19 just --

20          Q.       No problem.

21          A.       -- trying to stay on point.

22          Q.       I can read it -- I can read it  
23 back to you.

24                   What, if any, past experience  
25 have you had over the course of your career



1 with HAZMAT incidents involving a concern for  
2 VCM polymerization, other than the East  
3 Palestine derailment?

4 A. I'll just say as an absolute,  
5 everything I've been taught by the producers  
6 of VCM that we work for, anytime we touch  
7 VCM, it's high-level, pristine, clean, dry,  
8 transfer equipment, high level of quality  
9 control, zero tolerance for off-specifying --  
10 or off-spec'ing this product for anything  
11 that we do to touch it, with the risk of if  
12 we do anything to off-spec it, it could have  
13 a problem in transportation.

14 That's what I've been taught.  
15 That's what producers, people, have, you  
16 know, over -- overseen us in the field, and  
17 so we have a very high level of respect for  
18 VCM.

19 Q. So let me ask the question a  
20 little differently.

21 Over the course of your career  
22 in responding to HAZMAT incidents, which do  
23 you specifically recall where polymerization  
24 of VCM was suspected, the idea it was  
25 actually happening?

1 A. East Palestine, Ohio.

2 Q. Okay. Other than East  
3 Palestine, Ohio. I'm sorry.

4 A. East Palestine, Ohio.

5 Q. So other than East Palestine,  
6 Ohio, the VCM-related HAZMAT incidents you  
7 responded to, polymerization was always a  
8 concern, but there were none where you  
9 suspected it was actively occurring.

10 Is that fair?

11 A. That's fair.

12 Q. Over the course of your  
13 training in your career responding to HAZMAT  
14 incidents, have you become familiar with the  
15 process whereby VCM is stabilized for  
16 transport?

17 A. Yes.

18 Q. And there are, correct me if  
19 I'm wrong, two distinct methods for  
20 stabilizing VCM.

21 Is that correct?

22 A. That's my understanding.

23 Q. The first is the introduction  
24 of an inhibitor.

25 Is that right?

1           A.       Correct.

2           Q.       And inhibitors can involve  
3       several chemicals, one of which includes  
4       phenol.

5                     Right?

6           A.       As you mentioned, there's  
7       different chemicals that can inhibit VCM, and  
8       that's an example where I would consult a  
9       chemist to inquire what they might be using  
10      to inhibit.

11          Q.       Over the course of your career,  
12      have you come to know that phenol is an  
13      inhibitor for VCM polymerization?

14          A.       I don't -- I'd have to refer to  
15      my data on that. I'm going to take your word  
16      for it. If you have facts that say that, I  
17      will acknowledge that that could be correct.

18          Q.       Putting aside what chemicals  
19      are the inhibitors that may be introduced, is  
20      it your understanding that the inhibitor  
21      effectively prevents the polymerization  
22      reaction from occurring as long as it's  
23      present within the vessel?

24          A.       In normal handling, that is why  
25      they put it in there.

1           Q.       The second method for  
2       stabilizing VCM for transport includes  
3       purging of oxygen.

4                   Is that right?

5           A.       Can you ask your question one  
6       more time?

7           Q.       Sure.

8                   The second method for  
9       stabilizing VCM for transport includes oxygen  
10      purging.

11                  Is that correct?

12          A.       Yes, that's what Oxy had shared  
13      with us that weekend in East Palestine, yes.

14          Q.       Before the East Palestine  
15      derailment, had you had any personal  
16      experience responding to HAZMAT incidents  
17      involving oxygen-purged, stabilized VCM?

18          A.       Yes.

19          Q.       Which incidents were those, if  
20      you can recall?

21          A.       Paulsboro, New Jersey.

22          Q.       And if I'm not mistaken,  
23      Paulsboro, New Jersey, was also Oxy-produced  
24      VCM.

25                  Is that correct?

1           A.       That's correct.

2           Q.       But in the Paulsboro incident,  
3 polymerization was not suspected.

4                   Is that fair?

5           A.       Much different conditions. No  
6 fires. No flame impingements. A huge,  
7 gaping hole in the side of tank car with a  
8 lot of refrigerated product remaining in it.  
9 So night and day difference. It's apples and  
10 oranges, but...

11          Q.       Sure. And really that's what  
12 I'm asking.

13                   Polymerization was not a focal  
14 point of concern in the Paulsboro derailment.

15                   Right?

16          A.       It was a point of discussion in  
17 the handling of it as we were trying to get  
18 it out of the auto-refrigeration stuff into  
19 receiving tank cars. It was a concern, do we  
20 need to inhibit it or not. That was part of  
21 the discussion in the handling of what was  
22 auto-refrigerated, so it came up in  
23 discussion.

24          Q.       Before the Paulsboro incident,  
25 had you received any training specific to the

1 stabilization of VCM for transport using  
2 oxygen purging?

3 A. Not specifically.

4 Q. Since Paulsboro, have you come  
5 to understand that the way oxygen purging  
6 stabilizes VCM is by removing organic  
7 material that's needed to initiate the  
8 polymerization reaction?

9 A. No. My understanding is they  
10 purge with nitrogen at the rack after they  
11 load the car.

12 And I don't know if there's a  
13 splitting hairs difference in the molecular  
14 chemistry, is why I'm clarifying my  
15 understanding.

16 Q. Sure.

17 The nitrogen is introduced in  
18 order to expel oxygen from the vessel.

19 Right?

20 A. Correct. They load the VCM  
21 into the cars, liquid-phased compressed gas,  
22 and then they would put a nitrogen sweep and  
23 a nitrogen pad on it to ship it.

24 Q. So that there is oxygen at less  
25 than 200 parts per billion inside of the

1 vessel.

2 Right?

3 A. That sounds accurate.

4 Q. So it's an introduction of  
5 nitrogen in order to remove oxygen.

6 Right?

7 A. Yes.

8 Q. And it's because without oxygen  
9 inside the vessel, initiators that would  
10 typically cause a polymerization reaction  
11 can't occur.

12 Is that fair?

13 MR. LEVINE: Objection.

14 THE WITNESS: I'd say that's my  
15 understanding, but -- that's why they  
16 put the nitrogen in there.

17 QUESTIONS BY MR. GOMEZ:

18 Q. And that's an understanding  
19 that you had gained from Oxy going back to  
20 Paulsboro?

21 A. It -- no, not necessarily  
22 Paulsboro in the sense of nitrogen purging on  
23 a breached car that had a gaping hole in it.

24 We discussed adding inhibitor  
25 to the receiving cars, and we were told,

1     like, we're not adding inhibitors because we  
2     have to work really hard to get them back out  
3     again, quote/unquote.

4             Q.       Oh, okay. So if I understand  
5     you correctly, the concept we just discussed  
6     came up in the context of transloading the  
7     product from the damaged cars in Paulsboro to  
8     the receiving cars?

9             A.       Correct. I had inquired with  
10    the producer's folks who were on site and the  
11    local plant manager that was receiving those  
12    cars, do we need to add inhibitor? And they  
13    said, no, we don't use inhibitors. We  
14    stabilize them with nitrogen because we have  
15    to work really hard to get the inhibitors  
16    back out of them again.

17            Q.       With respect to VCM that's  
18    stabilize via the introduction of an  
19    inhibitor, is it your understanding that when  
20    heat is applied to a pressurized vessel  
21    that's stabilized in that manner, that can  
22    lead to the loss of those inhibitors?

23            A.       I'm sorry, ask your question  
24    again.

25            Q.       Sure.



1 Talking about VCM stabilized  
2 with an inhibitor.

3 Right?

4 A. With an inhibitor, okay.

5 Q. Is it your understanding that  
6 if heat is introduced to that scenario, it  
7 could lead to the loss of that inhibitor and,  
8 therefore, the destabilization of VCM?

9 A. That is the general training  
10 that I've received in polymerizable materials  
11 training over my years. That is a good  
12 statement, yes.

13 Q. And has your training indicated  
14 that that phenomenon does not occur with VCM  
15 that is stabilized for transport via oxygen  
16 purging?

17 A. Can you rephrase -- say your  
18 question again?

19 Q. Sure.

20 Has your training indicated to  
21 you that that phenomenon, which occurs when  
22 VCM is stabilized with an inhibitor and heat  
23 is applied, does not occur when heat is  
24 introduced to VCM stabilized via oxygen  
25 purging?

1 MR. LEVINE: Objection.

2 THE WITNESS: I'd say it's  
3 apples and oranges. You're asking a  
4 question -- if it's not stabilized  
5 with inhibitor, your question doesn't  
6 make sense.

7 QUESTIONS BY MR. GOMEZ:

8 Q. Okay. It doesn't make sense  
9 because they're two different methods for  
10 stabilizing the VCM.

11 Right?

12 A. Correct.

13 Q. And when you introduce heat to  
14 VCM that's inhibited by the introduction of  
15 an inhibitor, that's when you see that  
16 potentially go away.

17 Right?

18 MR. HANSON: Objection.

19 THE WITNESS: It's -- yeah,  
20 it's just -- it's part of our  
21 training.

22 QUESTIONS BY MR. GOMEZ:

23 Q. Okay. I understand it's part  
24 of your training, and I want to make sure  
25 that I understand the differences between

1 these two methods.

2 A. Okay.

3 Q. Specifically as it relates to  
4 the introduction and the application of heat.

5 A. Okay.

6 Q. Right?

7 The problem potentially with an  
8 inhibited VCM is that when you introduce  
9 heat, the inhibitor can go away.

10 Right?

11 A. That's what I've been taught,  
12 yes.

13 Q. That's what you've been  
14 trained.

15 Right?

16 A. Yes.

17 Q. But because oxygen  
18 stabilization is a completely different  
19 method, your training has taught you that  
20 when heat is applied, you don't lose  
21 inhibition.

22 Right?

23 A. No, that's not correct.

24 Q. Okay. What have you learned  
25 about, in terms of oxygen-stabilized VCM,

1     what heat does to the stabilization of that  
2     product?

3             A.       In the case of East Palestine,  
4     Ohio, the heat generated pressure in the car.  
5     Pressure relief devices activated early and  
6     often. Would have driven that nitrogen right  
7     out of the car into the atmosphere.

8             That nitrogen didn't stay in  
9     that car, and that heat sustained for several  
10    hours.

11            Q.       Okay.

12            A.       So that was our concern.

13            Q.       So I want to get into East  
14    Palestine, obviously, but let's focus first  
15    on your training, right, before East  
16    Palestine.

17                    What training did you receive,  
18    and what -- and what does it tell us, or what  
19    did it tell you, about what happens to  
20    stabilized VCM -- sorry, oxygen-stabilized  
21    VCM when heat is introduced?

22                    MR. LEVINE:   Objection.

23                    THE WITNESS:   Yeah, I need you  
24                    to ask the question again --

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Sure.

3 A. -- because -- go ahead.

4 Q. Before East Palestine, what  
5 does -- what did your training tell you or  
6 instruct you regarding what occurs to  
7 oxygen-stabilized VCM when heat is applied?

8 MR. LEVINE: Objection.

9 THE WITNESS: Stabilized with  
10 nitrogen or not, when you apply heat  
11 to VCM, it's a risk.

12 QUESTIONS BY MR. GOMEZ:

13 Q. What is a risk?

14 A. It's a risk of polymerization.  
15 That's how they started off in the plants.  
16 They get it to polymerize by putting in  
17 reactors and adding heat to it. That's how  
18 they start their process.

19 Q. Heat plus an initiator, right?

20 MR. LEVINE: Objection.

21 THE WITNESS: People produce it  
22 differently, from producer to  
23 producer. I'm not -- I'm not a  
24 producing expert. I'm just an  
25 emergency response guy.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Are you aware of any producer  
3 that polymerizes VCM in their facilities  
4 simply by adding heat?

5 MR. LEVINE: Objection.

6 THE WITNESS: I've been told by  
7 one, yes.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Which one is that?

10 A. I mean, do I bring in another  
11 customer's name here? I mean, what's the --

12 MR. HANSON: Answer -- answer  
13 your question to the best of your  
14 ability. Answer the question.

15 THE WITNESS: I'll say the  
16 customer's name.

17 Westlake Chemical.

18 QUESTIONS BY MR. GOMEZ:

19 Q. And is that something that you  
20 learned in the course of responding to the  
21 East Palestine derailment or at some point  
22 previously?

23 A. They were one of the presenters  
24 in my years of The Chlorine Institute  
25 programming. They shared case studies, you

1 know. So, no, I learned that through The  
2 Chlorine Institute training.

3 Q. I want to talk a little bit  
4 about something you mentioned earlier as far  
5 as heat being applied to, say, a tank car,  
6 for example, PRDs activating as a result and  
7 the loss of the nitrogen blanket.

8 That's something we were  
9 discussing earlier.

10 Right?

11 A. Yeah, and that's not unique to  
12 vinyl chloride.

13 Q. Is it your understanding that  
14 once that nitrogen blanket is expelled under  
15 that scenario, that in the case of VCM, the  
16 VCM would then become unstable?

17 A. It would -- in my mind, it  
18 would become less stable, yes.

19 Q. Less stable because there's no  
20 longer that nitrogen blanket.

21 Fair?

22 A. Fair.

23 Q. But not less stable because the  
24 activation of the PRDs would introduce  
25 impurities to the vessel.

1 Right?

2 A. No, there is actually a remote  
3 chance of that.

4 Q. Remote chance.

5 Have you seen that in your --  
6 in the course of your personal responses to  
7 HAZMAT incidents?

8 A. My personal response is no.  
9 But again, various customers that I've been,  
10 you know, privy to and blessed to have known  
11 in my career have shared stories.

12 Q. And those stories, were they  
13 specific to VCM?

14 A. Not necessarily.

15 Q. Can you give -- without  
16 identifying who those customers or producers  
17 were, can you identify examples that were  
18 shared with you about where this phenomenon  
19 occurred?

20 A. No, not specifically. No, not  
21 specifically.

22 Q. Mr. McCarty, we can agree that  
23 not all monomers are the same.

24 Right?

25 A. Correct.



1 Q. In fact, chemical properties  
2 can vary wildly from one monomer to the next.

3 Correct?

4 MR. LEVINE: Objection.

5 THE WITNESS: I was going to  
6 say, I can't comment on the word  
7 "wildly," but I can agree not all  
8 chemistry is the same. I'll agree to  
9 that.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Let me be more specific.  
12 From one monomer to the next,  
13 there can be a variation in their chemical  
14 reactivity.

15 Right?

16 A. Sure.

17 Q. And from one monomer to the  
18 next, there can be variation in boiling  
19 points.

20 Right?

21 A. Yes.

22 Q. And from one monomer to the  
23 next, there can be differences in  
24 flammability limits.

25 Right?

1 A. Yes.

2 Q. Same goes for pressure curves.

3 From one monomer to the next, there can be  
4 different pressure curves.

5 Right?

6 A. Correct.

7 Q. And the same applies to  
8 polymerization conditions. The  
9 polymerization conditions that are necessary  
10 for one monomer may not apply to another  
11 monomer.

12 Right?

13 A. Correct.

14 Q. With respect to the  
15 polymerization of VCM, can you describe for  
16 me specifically by reference to the training  
17 you've been providing over the last 10 or  
18 12 years what your understanding is of the --  
19 of the polymerization chemistry of that  
20 chemical?

21 A. That it has a risk to  
22 polymerize if you off-spec it in getting it  
23 moist, getting it dirty, getting it hot in a  
24 pool fire. All those three elements are at  
25 risk of polymerization.

1 Q. Okay. Putting aside the  
2 conditions that may trigger polymerization of  
3 VCM, can you describe for me the chemistry of  
4 how VCM polymerizes?

5 A. No, I can't. I'm not a  
6 chemist.

7 Q. So, and I want to make sure  
8 that I understand what it is you're training  
9 on at the Chlorine Institute.

10 So you're -- is it fair to say  
11 you're training on conditions that can cause  
12 polymerization, not how polymerization  
13 actually occurs, how the reaction actually  
14 occurs within the chemical?

15 MR. HANSON: Objection.

16 MR. LEVINE: Objection.

17 MR. HANSON: Sorry.

18 THE WITNESS: Well, that's  
19 accurate. I mean, that's an accurate  
20 characterization of training. This is  
21 emergency response training, not  
22 chemistry training.

23 QUESTIONS BY MR. GOMEZ:

24 Q. Okay. So you're not given  
25 chemistry training in the Chlorine Institute

1 classes; your focus is on identifying  
2 conditions from a HAZMAT perspective that  
3 could lead to polymerization?

4 A. And to prevent it, correct.

5 Q. Okay. Understanding that  
6 you're not a chemist and you're not providing  
7 that kind of education at these Chlorine  
8 Institute meetings, do you have an  
9 understanding of what the chemical reaction  
10 looks like when VCM polymerizes into  
11 polyvinyl chloride, or PVC?

12 A. I've never seen it happen other  
13 than, like I say, this whole event here.  
14 But, so, no, I've never been in a lab that  
15 show-and-tell'd me how this works. I've  
16 never seen that.

17 Q. Fair enough. "Seen" is a bad  
18 word.

19 Has it ever been described to  
20 you the chemical changes that VCM undergoes  
21 when it polymerizes into PVC?

22 A. There may be a slide in that  
23 slide deck, and I can tell you that slide  
24 gets hit for just seconds because  
25 99.99 percent of the people in the room,

1 including myself, are not chemists.

2 Q. Okay.

3 A. So it's...

4 Q. Well, do you know that when VCM  
5 undergoes polymerization to PVC, the way that  
6 that happens is by breaking certain bonds in  
7 the chemical?

8 Is that something you've been  
9 trained on?

10 A. I can say, the response  
11 training that we've gotten is characteristics  
12 of VCM, boiling points, pressure curves,  
13 expansion ratios, flammable ranges, risk of  
14 polymerization, here's how to avoid  
15 polymerization, here's what to do in certain  
16 cases.

17 Those are the kinds of things  
18 we train about. We don't train to the micro  
19 detail of chemistry, no.

20 Q. Okay. And those micro details  
21 would include the fact that VCM's chemical  
22 bonds don't break on the application of heat  
23 alone upwards of like 500 degrees Fahrenheit.

24 Right?

25 MR. LEVINE: Objection.

1 THE WITNESS: We don't get that  
2 specific.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Have you received training  
5 about what type of heat signature is produced  
6 by VCM that's actively undergoing  
7 polymerization?

8 A. No.

9 Q. So you've never received  
10 training about the amount of heat that's  
11 generated by the VCM reaction if it's  
12 undergoing polymerization?

13 A. Not specifically, no.

14 Q. So that would include not  
15 knowing about the amount of BTUs that are  
16 produced per pound of VCM undergoing  
17 polymerization.

18 Fair?

19 MR. LEVINE: Objection.

20 THE WITNESS: Yeah, not  
21 specifically, no.

22 QUESTIONS BY MR. GOMEZ:

23 Q. And is it fair to say that if  
24 you haven't received training or education  
25 about the micro details of that chemistry,

1 that that would include not having received  
2 training on the different temperature  
3 thresholds for different parts of the  
4 chemical reaction where VCM polymerizes into  
5 PVC?

6 A. Say --

7 Q. That was a terrible question.

8 A. I was going to say, can you  
9 rephrase that one?

10 Q. Let me rephrase it. Terrible  
11 question.

12 If you haven't received  
13 training or education about the micro details  
14 of the chemistry, would that include training  
15 on the various temperature thresholds where  
16 different things or different steps occur in  
17 the VCM polymerization reaction?

18 MR. LEVINE: Objection.

19 THE WITNESS: Yeah, that's the  
20 kind of stuff we get from reference  
21 data in like The Chlorine Institute  
22 manual-type stuff. And so, no, we  
23 don't -- again, we're not specifically  
24 training as chemists on any given  
25 product that we respond to.

1 QUESTIONS BY MR. GOMEZ:

2 Q. But would you agree with me  
3 it's important to know how chemicals involved  
4 in a hazardous material incident react in  
5 order to gauge or determine the best plan for  
6 dealing with that scenario?

7 MR. HANSON: Objection.

8 MR. LEVINE: Objection.

9 THE WITNESS: Yes, we did.

10 (McCarty Exhibit 1 marked for  
11 identification.)

12 QUESTIONS BY MR. GOMEZ:

13 Q. Can we pull up Document  
14 Number 43, which we'll mark as Exhibit 1 to  
15 Mr. McCarty's deposition?

16 Mr. McCarty, the document that  
17 we've marked as Exhibit 1 to your deposition  
18 you of course have the opportunity to look  
19 through before I ask you any questions, but  
20 I'll just direct your -- I'll tell you that  
21 I'm only going to ask you about pages 94 and  
22 95, if you want to take a look at that.

23 MR. HANSON: Why don't you look  
24 at the whole thing just for a second  
25 to make sure you understand what it



1 is, and then look at the specific  
2 pages Mr. Gomez would like to you see.

3 MR. GOMEZ: Why don't we -- why  
4 don't we go off the record so that we  
5 can make sure that counsel in the room  
6 have access to the exhibits as well.

7 VIDEOGRAPHER: Off the record  
8 at 9:58.

9 (Off the record at 9:58 a.m.)

10 VIDEOGRAPHER: We are now back  
11 on the record at 10:01.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Mr. McCarty, the document that  
14 we marked as Exhibit 1 before we took our  
15 quick break, you can see from the cover page  
16 it's also Group B Exhibit 10 to the NTSB  
17 investigative hearing.

18 Is that right?

19 A. Yes.

20 Q. And according to the title  
21 given by the NTSB, the document is the  
22 Hazardous Material Group Chair's Factual  
23 Report.

24 Right?

25 A. Yes.

1           Q.       The NTSB investigative hearings  
2     that are referenced on this cover page, do  
3     you understand those to be the investigative  
4     hearings that took place in East Palestine in  
5     June of 2023?

6           A.       Yes.

7           Q.       And you were a panelist for one  
8     of the sessions of those investigative  
9     hearings.

10                   Correct?

11          A.       Yes.

12          Q.       Have you seen this document  
13     before today?

14          A.       I think perhaps once before  
15     those hearings.

16          Q.       As I said, we're going to be  
17     focusing on page 94 and 95, if you can turn  
18     to -- turn to that section of the report.

19                   And specifically I want to  
20     direct your attention to the bottom of 94,  
21     continuing on to 95, which reads, "The IC  
22     said the declining tank car temperatures did  
23     not impact SPSI's and SRS's urgency to  
24     conduct a vent and burn, but more so the need  
25     to get it done during daylight hours. The

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1 SPSI president and SRS project manager told  
2 the IC that if at any point the tank car  
3 temperature rose to 150 degrees Fahrenheit,  
4 for safety reasons they would withdraw  
5 personnel from the area and stop any -- stop  
6 any attempts to mitigate the tank cars. They  
7 also told the IC that should the temperature  
8 in the tank car reach 153 to 158 degrees  
9 Fahrenheit, the result would be rapidly  
10 increasing temperature and uncontrolled  
11 polymerization reaction."

12 Do you see that section, sir?

13 A. I do see that.

14 Q. And did I read that section  
15 accurately?

16 A. You read it as it's printed.

17 Q. There's references to IC in  
18 this section of Exhibit 1.

19 Do you understand that to be  
20 incident command?

21 A. Yes.

22 Q. And the last sentence that I  
23 just read aloud, which again is, "They also  
24 told the IC that should the temperature in  
25 the tank car reach 153 to 158 degrees

1     Fahrenheit, the result would be rapidly  
2     increasing temperature and uncontrolled  
3     polymerization reaction," is that something  
4     that you shared with the incident command?

5             A.       No.

6             Q.       So the reference here to SPSI  
7     and SRS providing that information to the IC  
8     is inaccurate?

9             A.       It's inaccurate.

10            Q.       These temperature ranges that  
11    are discussed here, 153 to 158 degrees  
12    Fahrenheit, and the connection to a  
13    polymerization reaction, is that your  
14    understanding of the polymerization chemistry  
15    of VCM?

16            A.       No. This conversation was -- I  
17    read this in early June, prior to the  
18    hearings, and I took exception when I read  
19    that. I said, I never said that.

20                    So somehow, if this is their  
21    final document, that never got clarified.

22                    But the memory I have of any  
23    conversation with the fire chief, and if he  
24    asked the question, you know, when would you  
25    be concerned to -- you know, and we said, you

1 know, 150. And it had to do with damage  
2 assessment, unknown damages, the risk of any  
3 kind of hidden damages. And most of the car  
4 we couldn't see for scorch, gouges, wheel  
5 burns, pressure buildups.

6 The fact that this car was no  
7 longer venting and burning, it was no longer  
8 relieving itself, it was plugged up,  
9 everything -- all its service equipment was  
10 plugged up at that point. And if it had  
11 showed increases in temperature rise, we were  
12 concerned of its internal stability and  
13 unknown damages. That was the context of  
14 this answer.

15 What is -- you know, how they  
16 got this out the fire chief, I mean, he may  
17 have had a preconceived notion of the  
18 conversation and assumed we meant  
19 polymerization, but I can't assume what the  
20 fire chief assumed at that point in time.

21 Q. Just focusing on that last  
22 sentence and the numbers that are provided  
23 there, the relationship between this  
24 temperature range of 153 degrees Fahrenheit  
25 to 158 degrees Fahrenheit and the

1 polymerization of VCM, is that something  
2 you've ever learned in your training over the  
3 course of your career in HAZMAT?

4 A. Chip had referenced a New  
5 Jersey Health Department document that  
6 suggested something in a similar range, and I  
7 can't remember what it said. So that was --  
8 again, in my mind, it was about damage  
9 assessment, unknown conditions.

10 We never told them  
11 polymerization. I can tell you -- at least I  
12 didn't. I never said the words  
13 "polymerization."

14 We were concerned about  
15 polymerization, but I never gave them some  
16 magic recipe of 150. And this -- I took  
17 exception when I read this in June; I take  
18 exception to reading it today.

19 Q. Do you have any sense of where  
20 the NTSB may have gotten this temperature  
21 range of 153 to 158 in connection with  
22 polymerization and the fact that they claimed  
23 you told the IC about this?

24 A. It was --

25 MR. LEVINE: Objection.

1 THE WITNESS: -- their  
2 interview with the IC.

3 Sorry.

4 But I do know that the NTSB was  
5 their -- their interview from the IC.

6 QUESTIONS BY MR. GOMEZ:

7 Q. And again, just focusing on  
8 what's on the page, the temperature range  
9 specifically. Polymerization occurring at a  
10 temperature range of 153 to 158 degrees is  
11 not something that you've been trained on.

12 Right?

13 A. The data resources, the use of  
14 the data resources and the conditions  
15 presented in East Palestine, it was a complex  
16 chemical -- not a complex chemical. A  
17 complex damage assessment formula. It was  
18 one element in a big-picture recipe.

19 Q. Okay. I appreciate that.

20 I just want to know, this  
21 temperature range that you're saying you  
22 didn't tell the IC, and I appreciate that --

23 A. This morning, I'd have to go  
24 look it up.

25 Q. My question to you is, this

1 temperature range that we're looking at on  
2 the page, 153 to 158 causing a runaway  
3 polymerization reaction, as you sit here  
4 today, is that something that you've ever  
5 heard in a training you received in your  
6 HAZMAT -- in your HAZMAT career?

7 A. Not specifically, because we  
8 don't go into those details.

9 Q. This same temperature range,  
10 153 to 158, causing a runaway VCM  
11 polymerization reaction, is that consistent  
12 with any technical advice that you recall  
13 receiving on the ground in East Palestine  
14 between February 3rd and February 6, 2023?

15 A. No.

16 Q. We can put that document aside,  
17 sir. Thank you.

18 In the -- in the course of  
19 responding to the derailment in East  
20 Palestine, and considering the potential for  
21 VCM polymerization, am I correct that there  
22 were several guidance documents that you  
23 relied on in responding to the conditions of  
24 the car? Cars?

25 A. Yes.



1 Q. And is one of those documents  
2 the VCM safety data sheet provided by Oxy  
3 Vinyls?

4 A. Yes.

5 Q. In your field and in your  
6 experience, is it commonplace for you to use  
7 or reference an SDS in responding to a HAZMAT  
8 incident?

9 A. Yes.

10 Q. And I should have clarified.  
11 Safety data sheet can be  
12 abbreviated to SDS.

13 Right?

14 A. Yes.

15 Q. An SDS is an OSHA requirement.  
16 Right?

17 A. Yes.

18 Q. And it's in fact a standardized  
19 document.

20 Right?

21 A. When you say "standardized  
22 document," I'm not sure what you mean.

23 Q. It's a document that has  
24 certain sections that are required by federal  
25 regulations.

1 Right?

2 A. Yes.

3 Q. To provide information for  
4 various chemicals in a standardized form.

5 Fair?

6 A. Yes.

7 Q. Would you agree with me that an  
8 SDS is a document that's intended to apply to  
9 a wide variety of scenarios?

10 A. No.

11 Q. What do you disagree with in  
12 that statement?

13 A. Safety data sheets are to  
14 communicate general hazards for people using  
15 chemicals under the Right-to-Know Laws. They  
16 want to know, you know, what kind of hazards  
17 this chemical presents, maybe some proper  
18 shipping names to refer to for bills of  
19 lading, stuff like that.

20 And as you said, it covers a  
21 lot of sections, right? A lot of sections  
22 for different applications.

23 Q. And the general hazards that  
24 you referenced, those can present themselves  
25 in a variety of different industries or

1 scenarios.

2 Right?

3 A. Yes, but not necessarily always  
4 on the SDS.

5 Q. So an SDS for any product can  
6 apply to a HAZMAT incident.

7 Right?

8 A. It's one piece of data, sure.

9 Q. It can apply to a HAZMAT  
10 incident that occurs in the course of  
11 transportation.

12 Right?

13 A. Yes.

14 Q. It can occur in a HAZMAT  
15 incident involving transportation via rail.

16 Right?

17 A. Sure.

18 Q. It can also apply to a HAZMAT  
19 incident involving transportation via truck.

20 Right?

21 A. Yes.

22 Q. It can apply to a HAZMAT  
23 incident involving transportation via ship.

24 Right?

25 A. Yes.

1           Q.       It can apply to a HAZMAT  
2 incident in the course of processing the  
3 chemical.

4                   Right?

5           A.       Yes.

6           Q.       It can apply to a HAZMAT  
7 incident in the course of the chemical being  
8 stored.

9                   Right?

10          A.       Yes.

11          Q.       It can apply to people in  
12 completely different lines of work being  
13 exposed to a chemical as it moves through a  
14 supply chain.

15                  Right?

16          A.       Yes. That's why they put it  
17 out there in the Right-to-Know Laws.

18          Q.       So it's not specific to any one  
19 particular type of HAZMAT incident.

20                  Right?

21                  MR. LEVINE: Objection.

22                  THE WITNESS: Correct. Fair.

23          QUESTIONS BY MR. GOMEZ:

24          Q.       And we talked about the  
25 standardized sections of the document.

1                   In the course of using SDSs to  
2   respond to HAZMAT incidents, has it been your  
3   practice to read the entire document when  
4   referencing it?

5           A.       Not necessarily. I don't worry  
6   about proper shipping names if I'm not  
7   packaging the chemical. As an example, I  
8   wouldn't hone in on, you know, air transport.  
9   I audit shipping regulations for samples if  
10   I'm dealing with a bulk tank car, so I would  
11   ignore those kinds of sections.

12          Q.       So in the course of responding  
13   to a HAZMAT incident, how do you decide which  
14   sections of the SDS to reference?

15          A.       You look for things like, you  
16   know, toxicity, any recommendations on  
17   personal protective equipment, reactivity,  
18   fire explosion hazards, those types of  
19   things.

20          Q.       And is it your practice to read  
21   all of those sections together to have a full  
22   understanding of the information the SDS is  
23   providing you?

24          A.       We read SDSs kind of like a  
25   résumé, top to bottom, left to right, and you

1     hone in on the things that grab your  
2     attention.

3             Q.       But you'd agree that there may  
4     be information in certain sections that sheds  
5     greater light on sections that you're  
6     specifically relying on in responding to a  
7     HAZMAT incident.

8                     Fair?

9                     MR. HANSON:   Objection.

10                    THE WITNESS:   Yeah, can you  
11       rephrase that?   I'm not sure --

12     QUESTIONS BY MR. GOMEZ:

13             Q.       Sure.

14                     Let's say you're concerned  
15     about reactivity of a chemical, for example.

16                     Right?

17                     Would you agree with me that  
18     there might be information in other sections  
19     of the SDS not specific to reactivity that  
20     provide context or additional information  
21     about that issue?

22                     MR. LEVINE:   Objection.

23                     THE WITNESS:   Yeah,  
24       potentially, but not necessarily.   I  
25       mean, if it's a reactivity issue, it

1           should be in a reactivity section.

2       QUESTIONS BY MR. GOMEZ:

3           Q.       So if information is not within  
4       the section that you expect it to be in the  
5       SDS, are you not considering it when relying  
6       on an SDS in responding to a HAZMAT incident?

7           MR. HANSON:   Objection.

8           MR. LEVINE:   Objection.

9           THE WITNESS:   Like I said, we  
10       read them top to bottom, left to  
11       right, and all information is  
12       considered.

13       QUESTIONS BY MR. GOMEZ:

14           Q.       So you're taking the whole  
15       document in, and you're using all the  
16       information that you glean from the document.

17                       Fair?

18           A.       Fair.

19           Q.       I think you mentioned this  
20       before, but correct me if I'm wrong.

21                       An SDS is one tool in the  
22       course --

23           A.       It's only one.

24           Q.       And there are several in the  
25       toolbox, so to speak.

1 Right?

2 A. Yes.

3 Q. What are some of the other  
4 tools in terms of guidance materials or  
5 documents that provide technical information  
6 in responding to a HAZMAT incident?

7 A. So we have the Handbook of  
8 Compressed Gases. The Vinyl Institute  
9 manual. Chlorine Institute has a manual.  
10 Railroad emergency action guides. There's a  
11 number of them.

12 Q. Would you agree with me that  
13 expert consultation is also one of those  
14 tools in the toolbox?

15 A. Yes.

16 Q. And one of those experts might  
17 be the product manufacturer who published the  
18 SDS.

19 Right?

20 A. Yes.

21 (McCarty Exhibit 2 marked for  
22 identification.)

23 QUESTIONS BY MR. GOMEZ:

24 Q. Can we pull up Document  
25 Number 30, which we'll mark as Exhibit



1 Number 2 to Mr. McCarty's deposition?

2 Mr. McCarty, this document that  
3 we've -- that we've just marked as Exhibit 2  
4 to your deposition, it's also the Group D,  
5 Exhibit 26 to the NTSB investigative hearing.

6 Is that correct?

7 A. Yes.

8 Q. And the title of the document  
9 according to the NTSB is "Vinyl Chloride  
10 Monomer Safety Data Sheet."

11 Right?

12 A. Yes.

13 Q. If we look at the actual  
14 document itself, it appears to be 18 pages  
15 provided by Oxy Vinyls. That is the safety  
16 data sheet for VCM.

17 Right?

18 A. Yes.

19 Q. The title of the document is --  
20 well, safety data sheet, vinyl chloride  
21 monomer. It's not specific to stabilized  
22 vinyl chloride monomer.

23 Correct?

24 A. If there's a separate data  
25 sheet for stabilized vinyl chloride monomer,

1 it was not available to us.

2 Q. Okay. I understand that.

3 My question was, is this  
4 document, to your knowledge, specific to  
5 stabilized VCM?

6 A. I never thought about it till  
7 your question.

8 Q. And VCM can be stabilized or  
9 unstabilized.

10 Right?

11 A. Sure.

12 Q. Fair to say that some  
13 information in the SDS might apply to vinyl  
14 chloride in stabilized form, whereas other  
15 information applies to vinyl chloride in  
16 unstabilized form?

17 MR. LEVINE: Objection.

18 THE WITNESS: Yeah.

19 QUESTIONS BY MR. GOMEZ:

20 Q. Is that not something you  
21 considered at the time you were reviewing  
22 this document in the course of responding to  
23 the East Palestine derailment?

24 A. Yes.

25 Q. Let's take a look at page 2 of

1 18. It's on the bottom towards the  
2 right-hand corner.

3 Under Section 2, Hazards  
4 Identification, let me know when you see that  
5 section.

6 A. Page 2, you said?

7 Q. 2 of 18.

8 A. Okay. I'm there.

9 Q. There is a section under that  
10 section heading 2 that says, "Precautionary  
11 Statements."

12 Do you see that?

13 A. Yes.

14 Q. And the second sentence says,  
15 "Requires stabilizer to prevent potential  
16 dangerous polymerization."

17 Did I read that correctly?

18 A. Yes.

19 Q. Is that a statement that you  
20 relied on when referencing this document in  
21 the course of responding to the East  
22 Palestine derailment?

23 A. I read that statement, and we  
24 know that Oxy doesn't ship unstabilized vinyl  
25 chloride. They either inhibit it or they

1 stabilize it. They do one or the other.

2 Q. Okay. So you did rely on this  
3 statement that we just read from page 2 of  
4 the SDS in the course of responding to the  
5 East Palestine derailment?

6 MR. HANSON: Objection.

7 THE WITNESS: We take it with  
8 all the other information, which would  
9 include the one right above that that  
10 says, "may mass explode in fire,  
11 extremely flammable gas, contains gas  
12 under pressure, may explode if heated,  
13 polymerization can occur."

14 Yes, we took that into  
15 consideration.

16 QUESTIONS BY MR. GOMEZ:

17 Q. You relied on both of those  
18 statements.

19 Right?

20 A. Yes, we did.

21 Q. And did both of those  
22 statements cause any confusion in the course  
23 of responding to the East Palestine  
24 derailment?

25 A. Specifically when Oxy folks

1 told us there was no inhibitor in them and  
2 they put nitrogen in the vapor space to  
3 stabilize, that did absolutely correlate with  
4 us, yes.

5 Q. And Oxy would be a resource in  
6 order to explain any confusion that you had  
7 as between those two statements.

8 Right?

9 MR. LEVINE: Objection.

10 THE WITNESS: They were a  
11 resource, and they explained how they  
12 stabilized their shipments.

13 QUESTIONS BY MR. GOMEZ:

14 Q. Okay. They're not just a  
15 resource; they're the experts on the product.

16 Right?

17 MR. HANSON: Objection.

18 MR. LEVINE: Objection.

19 THE WITNESS: They are product  
20 experts on vinyl chloride, yes.

21 QUESTIONS BY MR. GOMEZ:

22 Q. And in fact, they're product  
23 experts on their own vinyl chloride.

24 Right?

25 A. Yes.

1 Q. Which is the subject of this  
2 SDS.

3 Right?

4 A. Yes.

5 Q. And which is what was in the  
6 derailed railcars in East Palestine.

7 Right?

8 A. Yes.

9 Q. So if there was any confusion  
10 generated by the statements drafted by Oxy  
11 Vinyls, they'd be in the best position to  
12 explain any of those confusions.

13 Right?

14 MR. LEVINE: Objection.

15 THE WITNESS: Yeah, can you  
16 state your question?

17 QUESTIONS BY MR. GOMEZ:

18 Q. Sure.

19 If there was any confusion  
20 about how to read these two statements that  
21 we see on page 2 of 18 of the SDS, Oxy, as  
22 the manufacturer of the product at issue,  
23 would be in the best position to clarify that  
24 confusion.

25 Right?

1 MR. HANSON: Objection.

2 MR. LEVINE: Objection.

3 THE WITNESS: I just don't know  
4 where the question is going. I  
5 just -- I mean, they stabilize their  
6 shipments so they don't polymerize in  
7 transportation in normal handling.  
8 What you're missing is in normal  
9 handling, in normal conditions.

10 QUESTIONS BY MR. GOMEZ:

11 Q. I'm not asking about handling  
12 conditions.

13 What I'm asking about is, if  
14 there's confusion about this document drafted  
15 by Oxy Vinyls, do you agree with me, yes or  
16 no, that Oxy Vinyls is in the best position  
17 to clarify that confusion?

18 MR. LEVINE: Objection.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. GOMEZ:

21 Q. Let's look at page 3 of 18.

22 Towards the middle of the page,  
23 there's a section that says "GHS -  
24 Precautionary Statements - Prevention."

25 Do you see that?

1           A.       Precautionary statements,  
2       prevention, yes.

3           Q.       Second bullet point reads,  
4       "Stabilize with polymerization inhibitor,  
5       e.g." -- I'm omitting the chemical name --

6           A.       Yeah.

7           Q.       -- "or purging to remove  
8       oxygen."

9                       Did I read that correctly?

10          A.       Yes.

11          Q.       Is that a statement that you  
12       relied on in referencing this document in the  
13       course of responding to the East Palestine  
14       derailment?

15          A.       Every shipment of vinyl  
16       chloride from all of our customers is  
17       generally stabilized with either an inhibitor  
18       or, in this case, nitrogen.

19          Q.       Okay. Respectfully,  
20       Mr. McCarty, I didn't ask about whether VCM  
21       is shipped stabilized.

22                       My question is, the statement I  
23       just read, the second bullet point, is that  
24       one that you relied on from the SDS in the  
25       course of responding to the East Palestine



1 derailment?

2           A.       Now, when you say I relied on  
3 it, that's where I'm kind of confused with  
4 the question. When you say I relied on it,  
5 what are you -- what are you asking if I  
6 relied on it?

7           Q.       Did you use this information,  
8 the information that we're discussing in the  
9 SDS, to reach certain conclusions about the  
10 conditions of the cars, about the potential  
11 for polymerization in the cars and about  
12 mitigation activities, if any, that you could  
13 take in connection with the cars?

14                   MR. LEVINE: Objection.

15                   THE WITNESS: Yeah, I didn't  
16 need to read this on the SDS to know  
17 that Oxy stabilizes their shipments.  
18 I didn't need to read that.

19 QUESTIONS BY MR GOMEZ:

20           Q.       Okay.

21           A.       But the...

22           Q.       But this statement talks about  
23 stabilization vis-à-vis polymerization.

24                   Right?

25           A.       In normal handling, yes.

1 Q. Okay. I'm just asking what  
2 this says.

3 Can we agree that it says  
4 "stabilize with a polymerization inhibitor"?

5 A. Yes.

6 Q. Right?

7 Okay. Did you take this  
8 statement into account when reading all of  
9 the other statements made in the SDS in the  
10 course of responding to the East Palestine  
11 derailment?

12 A. Yes.

13 Q. And did this statement, as  
14 compared to other statements in the SDS,  
15 cause any confusion to you in the course of  
16 responding to the East Palestine derailment?

17 A. No.

18 Q. Let's skip down to Section 10,  
19 Stability and Reactivity. That's page 10 of  
20 18.

21 Do you see that section, sir?

22 A. 10 of 18, Section 10, yes.

23 Q. Okay. And that section is  
24 entitled "Stability and Reactivity."

25 Right?

1 A. Yes.

2 Q. The first subheading is,  
3 "Chemical Stability: Generally stable at  
4 normal temperatures and pressures; however,  
5 may violently polymerize or generate other  
6 hazardous conditions when not stabilized  
7 and/or stored correctly."

8 Did I read that right?

9 A. Yes.

10 Q. And the section below that is  
11 entitled "Reactivity" and reads, "Explosive  
12 or violent polymerization can occur when  
13 exposed to air, sunlight or excessive heat if  
14 not properly stabilized."

15 Did I read that section  
16 correctly?

17 A. Yes.

18 Q. These two statements under  
19 Chemical Stability and Reactivity, are those  
20 statements that you relied on in the course  
21 of responding to the East Palestine  
22 derailment?

23 MR. LEVINE: Objection.

24 THE WITNESS: Well, I would  
25 say, I'm going to just kind of, again,

1 go back to your phrasing of your  
2 question, "relied on."

3 It's certainly part of the  
4 information. And, you know, the key  
5 is they stabilize it with nitrogen.  
6 And when those PRDs were going off,  
7 nitrogen left the cars. So that  
8 limits the amount of stabilization.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Understood.

11 So is it fair to say that  
12 between what you were seeing in the field  
13 with the activation of the PRDs and the  
14 statements that are here that we're reading  
15 in the SDS, there was some inconsistency?

16 A. There's no inconsistency on the  
17 general guidelines for general safe handling  
18 of vinyl chloride monomer.

19 Oxy's done a nice job of  
20 presenting all the risks. They're presenting  
21 people how to handle it safely in normal  
22 handling to make sure you're -- if they have  
23 a customer, they have their own employees,  
24 they have contractors like us that are  
25 transferring it, packaging and handling it,

1 this is all good guidance. It's a good  
2 document for their guidance.

3 But safety data sheets are  
4 never the one and only document for emergency  
5 response because they're lacking a lot of  
6 other stuff. And that's this whole  
7 nonscientific, all -- all broad recipe of  
8 risk assessment at the derailment site.

9 Q. So the statements that we're  
10 reading in the SDS, those were not the only  
11 reason why, for example, you believed that  
12 polymerization might be occurring in the --  
13 in the VCM cars that derailed in East  
14 Palestine.

15 Right?

16 A. Correct.

17 Q. Instead, it was the information  
18 contained in the SDS plus your observations.

19 Right?

20 A. Correct.

21 Q. And if there were any questions  
22 about how the statements in the SDS relate to  
23 what you're seeing in the field in East  
24 Palestine, you had the opportunity to discuss  
25 those with Oxy as the product manufacturer.

1 Right?

2 A. Yes.

3 Q. And because they both wrote the  
4 SDS and are the experts in their product,  
5 they could provide valuable insight --

6 MR. LEVINE: Objection.

7 QUESTIONS BY MR. GOMEZ:

8 Q. -- on what was causing in the  
9 VCM cars.

10 Right?

11 MR. LEVINE: Objection.

12 MR. HANSON: Objection.

13 THE WITNESS: I can answer?

14 MR. HANSON: Yeah, of course.

15 Go ahead.

16 THE WITNESS: So, yes, we  
17 respect all the input from our  
18 customers, and it's not specific to  
19 Oxy. We respect that input from our  
20 customers, yes.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Okay. So if I understand you  
23 correctly, there are -- there's no single  
24 statement in this SDS that ultimately led you  
25 to conclude -- to conclude that

1 polymerization could be under -- or could be  
2 actively undergoing in the cars.

3 Fair?

4 A. Other than its repeated  
5 references to "could violently polymerize and  
6 violently explode" multiple times throughout  
7 the SDS.

8 Q. Okay. So then that's what I'm  
9 trying to understand is, if there's  
10 statements in the SDS that say that, and  
11 you're seeing -- you're having certain  
12 observations in the field, Oxy is the best  
13 one to reconcile what you're seeing in the  
14 field and the statements in the SDS.

15 Right?

16 MR. HANSON: Objection.

17 THE WITNESS: Not necessarily.

18 QUESTIONS BY MR. GOMEZ:

19 Q. Why not?

20 A. Because they're 2,000 miles  
21 away.

22 Q. Okay. They had video of the  
23 scene.

24 Right?

25 A. Some.

1 Q. They had videos of the PRDs.

2 Right?

3 A. Some.

4 Q. They had your reports about  
5 what was happening with the PRDs activating.

6 Right?

7 A. Yes.

8 Q. You gave them all the  
9 information that they would need in order to  
10 assess whether or not their product that  
11 they're the expert in was undergoing  
12 polymerization.

13 Right?

14 MR. LEVINE: Objection.

15 THE WITNESS: My communications  
16 with them, yes.

17 What I'm not privy to is, did  
18 they get information from anybody else  
19 that may have been erroneous. I don't  
20 know. I have no idea.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Do you know whether they got  
23 information from anyone other than you?

24 A. I have no idea.

25 Q. If there was any confusion or



1 inconsistencies or contradictions that you  
2 believed existed between the document we're  
3 looking at as Exhibit 2 and your observations  
4 in the field, would you agree with me that  
5 the best set of folks to reconcile those  
6 inconsistencies would have been Oxy?

7 MR. HANSON: Objection.

8 MR. LEVINE: Objection.

9 THE WITNESS: Oxy was engaged  
10 in the response.

11 QUESTIONS BY MR. GOMEZ:

12 Q. Okay. They were.

13 The question is, would they  
14 have been the best people to reconcile any  
15 inconsistencies in this document and what you  
16 were seeing in the field?

17 MR. LEVINE: Objection.

18 THE WITNESS: Inconsistencies  
19 in chemistry? Certain employees at  
20 Oxy that are really the chemists  
21 certainly were there. I mean, they  
22 were -- they were in the mix of  
23 communications.

24 QUESTIONS BY MR. GOMEZ:

25 Q. And they told you that taking

1     into account the statements of the SDS and  
2     all the observations that were being reported  
3     to them from you in the field, polymerization  
4     was not happening in the cars.

5                     Right?

6             A.       There was at least one person  
7     at Oxy in -- wherever they were from, Dallas  
8     or wherever, whoever -- I don't know where  
9     they dialed in from -- that believed that.

10                    But the people on the ground,  
11    the leader of their strike team on the ground  
12    and the body language of the other two  
13    fellows they had on the ground with us, they  
14    didn't concur with that. We had conflicting  
15    information from Oxy. Clearly, they did not  
16    concur with that.

17             Q.       Let's talk about those three  
18    gentlemen that were on the ground.

19                    One individual was Steve Smith.

20                    Right?

21             A.       Yes.

22             Q.       Another individual was Justin  
23    Cox.

24                    Right?

25             A.       Yes.

1 Q. And the third individual was  
2 Alexander, or Alejandro, Torres.

3 Right?

4 A. That's the one I couldn't  
5 remember. I'll take your word for it.

6 Q. Do you know all three of their  
7 specialties within Oxy?

8 A. I know Justin is the leader of  
9 their strike team because we've trained with  
10 him at the CHLOREP programs. That's how I  
11 know Justin.

12 Steve and the other fellow I  
13 just met at East Palestine.

14 Q. And did you come to learn when  
15 you met them in East Palestine what their  
16 specialties were at Oxy, putting aside Justin  
17 Cox?

18 A. Alejandro, I believe, was a  
19 tank car shipping manager kind of guy, I  
20 believe. And Steve, I believe, was a  
21 chemist.

22 Q. Okay. So Alejandro Torres is a  
23 tank car loading specialist. He knows about  
24 how the tank cars are loaded.

25 Right?

1           A.       I'll take your word for that.

2           Q.       Justin Cox is an emergency  
3 responder.

4                    Right?

5           A.       Yes.

6           Q.       So he knows about emergency  
7 response.

8                    Fair?

9           A.       Yes. And Oxy's products.

10          Q.       And Steve Smith is a chemist.

11                    So did you understand that

12 Steve Smith was an expert in the

13 polymerization of VCM?

14          A.       That was presumed, yes. That's  
15 why they sent him there. And we presumed if  
16 they're sending a chemist, he knows his  
17 products.

18          Q.       He told you that he wasn't an  
19 expert in VCM polymerization.

20                    Right?

21          A.       I don't remember that.

22          Q.       You don't remember him saying  
23 on multiple occasions that he was not a  
24 polymerization expert?

25          A.       I don't remember specific

1     conversations. What was clear to me, that  
2     the people on the ground in East Palestine  
3     weren't really able to talk without getting  
4     Dallas's permission to talk.

5             Q.       Without their permission or  
6     without their insight?

7                     MR. HANSON: Objection.

8                     THE WITNESS: I'll say he  
9     had -- however you interpret that,  
10    that was my -- that was my perception.

11    QUESTIONS BY MR. GOMEZ:

12             Q.       If Mr. Smith, for example, is  
13    not an expert in VCM polymerization, would  
14    you have expected him to give you information  
15    without checking with the experts back in  
16    Dallas?

17                     MR. LEVINE: Objection.

18                     THE WITNESS: Say your question  
19    again, please.

20    QUESTIONS BY MR. GOMEZ:

21             Q.       Sure.

22                     If Mr. Smith was not an expert  
23    in VCM polymerization, would you have  
24    expected him to give you technical advice and  
25    information without first getting it from the

1 actual experts back in Dallas?

2 MR. LEVINE: Objection.

3 THE WITNESS: In our position  
4 as emergency responders -- let's take  
5 the East Palestine and Oxy Vinyls off  
6 the table for a minute -- we go to any  
7 given emergency, and the customer  
8 has -- the product owner or the  
9 shipper sends their technical reps,  
10 their technical -- the reason the  
11 shippers send technical reps to the  
12 site is for technical expertise.

13 If they bring a chemist to the  
14 site that can't answer chemistry  
15 questions, they wasted their money on  
16 airfare.

17 So when they send people, we  
18 believe in good faith that they're  
19 there for the value that they bring.  
20 When they introduce as a chemist, we  
21 believe that he clearly understands  
22 the chemistry of his product or why  
23 else would they send him.

24 So if he mentioned something to  
25 me that he wasn't a VCM expert, I --

1           you know, that was -- okay, I'll -- if  
2           there's records that he said that,  
3           I'll take your word for it that it's  
4           on the record.

5                       Yeah, that's --

6       QUESTIONS BY MR. GOMEZ:

7           Q.       Do you understand that there's  
8           a difference between being an expert in VCM  
9           and being an expert in the polymerization of  
10          VCM that causes polyvinyl chloride?

11                   MR. LEVINE:  Objection.

12                   THE WITNESS:  In a world of  
13          emergency response that I've worked in  
14          for 35 years, no.

15                   When I -- when a product  
16          shipper sends a chemist to an  
17          emergency scene, they're offering a  
18          chemist to help with the emergency  
19          scene for that problem.

20       QUESTIONS BY MR. GOMEZ:

21           Q.       And they're also offering  
22          chemists back in Dallas.

23                   Right?

24           A.       Sure.

25           Q.       Chemists who are special -- who

1 are specializing in the polymerization of VCM  
2 to PVC?

3 A. Sure.

4 Q. All right. And Mr. Smith,  
5 while on site, is not the expert in the  
6 process where VCM polymerizes into PVC?

7 MR. HANSON: Objection.

8 THE WITNESS: Well, you just  
9 told me that this morning, so I'll  
10 take your word for it.

11 QUESTIONS BY MR. GOMEZ:

12 Q. So throughout all the response,  
13 the NTSB investigation, the panel hearings,  
14 today's the first time that you've heard  
15 anyone say that Mr. Smith was clear, he was  
16 not an expert in VCM polymerization?

17 A. I don't recall any vivid,  
18 detailed conversation like that on-site. No,  
19 I don't.

20 MR. GOMEZ: We've been going  
21 for a while. Why don't we take a  
22 break.

23 MR. HANSON: Sure.

24 VIDEOGRAPHER: Off the record  
25 at 10:33.



1 (Off the record at 10:33 a.m.)

2 VIDEOGRAPHER: We are now back  
3 on the record at 10:49.

4 (McCarty Exhibit 3 marked for  
5 identification.)

6 QUESTIONS BY MR. GOMEZ:

7 Q. Mr. McCarty, we marked before  
8 you walked back into the room a new exhibit  
9 which is in front of you, Exhibit 3. It's my  
10 Document Number 119.

11 Please take a look at that. I  
12 only have a handful of questions for you, the  
13 first being if you're familiar with it.

14 A. Yes, I am.

15 Q. And at least according to the  
16 cover sheet for this document, it's the  
17 Group C, Exhibit 3 to the NTSB hearings.

18 Correct?

19 A. Exhibit 3, yes, uh-huh.

20 Q. Titled "Emergency Response  
21 Guide (ERG) 2020 Guide 116 Vinyl Chloride."

22 Did I read that correctly?

23 A. Yes.

24 Q. And what appears there is in  
25 fact the excerpt from the ERG 2020 for

1 Guide 116.

2 Right?

3 A. Correct. Guide 116.

4 Q. Guide 116 is the guide that's  
5 applicable to VCM.

6 Right?

7 A. Correct.

8 Well, I don't see VCM on here,  
9 and I don't have the book in front of me, so  
10 I'm going to say the NTSB verified that  
11 before they published it.

12 Q. In all the time that you've  
13 been working in HAZMAT, have you come to  
14 understand that Guide 116 is the one that's  
15 applicable to VCM?

16 A. I don't memorize those things.  
17 That's why I just kind of qualified. I'm  
18 going to take this as NTSB vetted this and  
19 they put it in their report.

20 So for the purposes of -- I'm  
21 going to say yes to this, but I don't  
22 memorize the entire DOT guidebook.

23 Q. Okay. Thinking back to the  
24 East Palestine derailment, do you recall  
25 referencing this Guide 116 in connection with

1 VCM?

2 A. We encourage -- Norfolk  
3 Southern encouraged -- "we" as being the team  
4 with Norfolk Southern encouraged the fire  
5 chief command staff to seriously consider  
6 this DOT guidebook for what they were  
7 experiencing there, yes.

8 Q. And that would have been in  
9 connection with establishing an evacuation  
10 zone.

11 Is that right?

12 A. Correct.

13 Q. Correct me if I'm wrong. The  
14 way that the DOT ERG guidebook works, there's  
15 multiple chemicals that may be subject to a  
16 particular guide.

17 Fair characterization?

18 A. Correct, yes.

19 Q. So in the case of this  
20 Guide 116, I appreciate you said the NTSB  
21 probably did their homework and that it  
22 applies to VCM, but there may well be other  
23 chemicals that also apply to Guide 16 -- or  
24 to which Guide 116 applies?

25 A. That is possible.

1 Q. I want to just direct your  
2 attention to the title of the guide. It  
3 says, "Gases - Flammable (Unstable)."

4 Is that right?

5 A. That is what's presented as  
6 Guide 116, yes.

7 Q. In connection with the East  
8 Palestine derailment, is there any  
9 significance to the application of this guide  
10 which applies to Gases - Flammable  
11 (Unstable), when the VCM in the railcars was  
12 stabilized for transportation?

13 MR. LEVINE: Objection.

14 THE WITNESS: Say -- rephrase  
15 your question. Or reask your  
16 question.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Sure.

19 The VCM in the railcars was  
20 stabilized.

21 Right?

22 A. At the time of shipping, yes.

23 Q. And this Guide 116 applies to  
24 unstable, flammable gases.

25 So my question is, to your

1 mind, is there any issue with applying the  
2 advice given in Guide 116 to the derailed  
3 railcars in East Palestine because of that  
4 distinction?

5 MR. LEVINE: Objection.

6 THE WITNESS: There may or may  
7 not have been a different guide for  
8 stabilized vinyl chloride that the  
9 firemen may or may not have looked at.

10 In my mind, both guides would  
11 be applicable.

12 QUESTIONS BY MR. GOMEZ:

13 Q. Okay. If, in fact, there is  
14 not a guide for stabilized flammable gases,  
15 do you see any issue with first responders or  
16 emergency contractors relying on this  
17 Guide 116 in connection with the East  
18 Palestine derailment?

19 MR. LEVINE: Objection.

20 THE WITNESS: Do I see an issue  
21 with responders -- well, say that  
22 question again, please. I'm sorry.

23 QUESTIONS BY MR. GOMEZ:

24 Q. Sure.

25 If we assume -- for purposes of

1 my question, assume that there is no guide  
2 for stabilized flammable gases.

3 You with me --

4 A. Okay.

5 Q. -- so far?

6 If that's the case, do you see  
7 any issue with using the information in this  
8 Guide 116 to respond to the derailment when  
9 the VCM in the derailed railcars was  
10 stabilized for transportation by Oxy?

11 MR. LEVINE: Objection.

12 THE WITNESS: Yeah, that's a  
13 pretty vague question of speculation  
14 on a lot of things. So I will share  
15 with the group, I was assistant fire  
16 chief in my community for over ten  
17 years and, you know -- but again, take  
18 career HAZMAT out of it.

19 If I happen to be the incident  
20 commander, you know, every  
21 firefighter's training in the -- even  
22 in fundamental awareness HAZMAT  
23 classes get placard numbers, UN  
24 numbers and pull out this orange DOT  
25 guidebook.

1                   So in the case of fire chief X  
2                   or assistant chief Y at East  
3                   Palestine, had they put a shipping  
4                   paper and a placard number to this  
5                   orange DOT guidebook, if the DOT  
6                   guidebook referred them to 116, this  
7                   is the guide that they're going to  
8                   use.

9       QUESTIONS BY MR. GOMEZ:

10                  Q.       Okay.

11                  A.       That's how the process works.

12                  Q.       I get that completely. I guess  
13       let me try rephrasing the question one more  
14       time.

15                         If the DOT -- if the placard  
16       corresponds -- if the placard says "VCM" and  
17       VCM corresponds to this Guide 116, right?

18                         And the VCM in the railcars is  
19       stabilized for transport, is there any  
20       problem you see with applying a section that  
21       is specific to unstable, flammable gases?

22                         MR. LEVINE: Objection.

23                         THE WITNESS: Is there a  
24       problem with applying any one -- are  
25       you asking me to pick out a specific

1 section from this guide? I guess I'm  
2 not following your question.

3 QUESTIONS BY MR. GOMEZ:

4 Q. No, I guess -- let me just ask  
5 it one more time and see if we can -- we can  
6 get on the same page.

7 We've got VCM in the railcars  
8 in East Palestine that's stabilized.

9 Right?

10 A. Okay.

11 Q. The section of the DOT  
12 guidebook for VCM is what we're looking at  
13 here in Exhibit 3, Guide 116.

14 Okay?

15 That section is titled "Gases -  
16 Flammable (Unstable)."

17 Do you believe that the  
18 information in Guide 116 applying to Gases -  
19 Flammable (Unstable) still applies to VCM  
20 that's stabilized for transportation in  
21 railcars?

22 MR. LEVINE: Objection.

23 THE WITNESS: The answer is,  
24 yes, I do, for the purposes of  
25 emergency response consideration early



1 in a derailment.

2 And again, take VCM off the  
3 table. If it was another compressed  
4 gas, a flammable, compressed gas,  
5 that's why there -- as you opened up  
6 with the line of questioning, this  
7 guide may apply to other flammable,  
8 compressed gases, not just  
9 unstabilized ones.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Got it.

12 I want to look at the very  
13 first section of Guide 116 where the heading  
14 is "Potential Hazards, Fire or Explosion."

15 Do you see that?

16 A. Yes.

17 Q. The fifth bullet point down  
18 reads, "Those substances designated with a P  
19 may polymerize explosively when heated or  
20 involved in a fire."

21 Did I read that correctly?

22 A. Yes.

23 Q. Is this statement that I just  
24 read in Guide 116 of the 2020 ERG a statement  
25 that you considered in the course of

1 responding to the East Palestine derailment?

2 A. We know vinyl chloride to be a  
3 polymerizable material. I didn't need to  
4 read it here in the DOT guidebook.

5 Q. So it wasn't any information  
6 specific to this DOT guidebook that you  
7 considered in the course of evaluating  
8 whether polymerization was occurring in the  
9 VCM cars?

10 MR. LEVINE: Objection.

11 THE WITNESS: If you're -- are  
12 you asking me did I look at the DOT  
13 guidebook myself in this -- what are  
14 you asking me?

15 QUESTIONS BY MR. GOMEZ:

16 Q. I want to know whether or not  
17 when you looked at the DOT guidebook and you  
18 read the bullet point that we just discussed,  
19 whether that was something you kept in mind,  
20 specifically from the DOT guidebook, when  
21 considering whether polymerization was  
22 occurring in the VCM cars.

23 MR. LEVINE: Objection.

24 THE WITNESS: I personally did  
25 not look at the DOT guidebook.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Okay.

3 A. This is -- we recommended that  
4 the fire chief and the command staff look at  
5 the DOT guidebook.

6 Q. Okay. So to your knowledge,  
7 did anyone from SPSI consider the guidebook  
8 in the course of responding to the  
9 derailment?

10 A. I don't know if any of my  
11 employees looked at it or not. I don't know.

12 Q. Okay. Did you ask any of them  
13 in preparation for today?

14 A. No.

15 Q. Do you know whether anyone from  
16 SRS considered or relied on the guidebook?

17 A. No. I can't speak to SRS.

18 Q. We can put that one aside, sir.

19 Let's see. Are you familiar,  
20 Mr. McCarty, with Pamphlet 171 to the -- from  
21 The Chlorine Institute?

22 A. Yes.

23 Q. And was Pamphlet 171 another  
24 resource that was used by SPSI in the course  
25 of responding to the East Palestine

1 derailment?

2 A. Yes.

3 Q. Is SPSI a member of The  
4 Chlorine Institute?

5 A. Yes, we are.

6 Q. And I've had a little bit of  
7 explanation about this, but there's different  
8 types of membership.

9 Is SPSI an associate member?

10 A. I don't remember how they  
11 categorize us in their categories, so I don't  
12 want to guess at that.

13 Q. But you have some participation  
14 in workshops.

15 Right?

16 A. Yes.

17 Q. And you have some participation  
18 in the compilation of the pamphlets that are  
19 published by The Chlorine Institute.

20 Right?

21 A. On occasion. We get invited to  
22 participate on certain subcommittees that may  
23 work on a pamphlet or two on occasion.

24 Q. And if I'm not mistaken, you  
25 had personal involvement with the creation of

1 Pamphlet 171 from The Chlorine Institute.

2 Right?

3 MR. LEVINE: Objection.

4 THE WITNESS: Not its initial  
5 creation, no.

6 (McCarty Exhibit 4 marked for  
7 identification.)

8 QUESTIONS BY MR. GOMEZ:

9 Q. Okay. Let's pull up  
10 Document 112, which we'll mark as Exhibit 4  
11 to the deposition.

12 And, Mr. McCarty, just for your  
13 convenience, we're going to look at the 58th  
14 page of that long document, which  
15 unfortunately in this version doesn't have  
16 page numbers, but we're going to be able to pull  
17 it up on the screen in front of you to kind  
18 of orient you in the document.

19 A. Okay.

20 Q. That's it. Excellent.

21 Mr. McCarty, the document that  
22 we've marked as Exhibit 4, it appears to be a  
23 presentation put together by The Chlorine  
24 Institute.

25 Right?

1 A. Yes.

2 Q. And specifically that 58th page  
3 that I've directed your attention to, that's  
4 the start of the -- of the presentation  
5 entitled "VCM Workshop"?

6 A. Yes.

7 Q. The next page, 59, of the  
8 document references a workshop that occurred  
9 July 13, 2016, in Calvert City, Kentucky,  
10 with Westlake as the host.

11 Do you see that?

12 A. Yes.

13 Q. And under HAZMAT ER  
14 Contractors, you're listed as an attendee.

15 Right?

16 A. Yes.

17 Q. The next page references more  
18 information about the VCM workshop, and  
19 specifically the last bullet point notes that  
20 the discussion will be used as a baseline for  
21 pamphlet development.

22 Do you see that?

23 A. Okay.

24 Q. Having looked at this document,  
25 does that refresh your recollection at all to

1 your participation in the -- in the creation  
2 of Pamphlet 171 from The Chlorine Institute?

3 A. I had forgotten about that  
4 session in Calvert City in whatever year that  
5 that was. I had forgotten all about it.

6 Q. Fair enough.

7 A. 2016.

8 Q. So having looked at that  
9 document now, you recall that you  
10 participated in the creation of Pamphlet 171.

11 Is that fair?

12 A. No.

13 Q. You don't?

14 A. I participated in that session  
15 as an attendee, but I was not on the  
16 committee that produced the document.

17 Q. Okay. Do you understand from  
18 this document that your discussions were used  
19 as a baseline for the pamphlet development?

20 MR. HANSON: Objection.

21 MR. LEVINE: Objection.

22 THE WITNESS: No, I wouldn't  
23 characterize that.

24 QUESTIONS BY MR. GOMEZ:

25 Q. So The Chlorine Institute just

1 put that in there?

2 A. Well, you said me personally.

3 You kind of -- you said that my

4 discussions --

5 Q. Uh-huh.

6 A. -- is how you phrased your

7 question.

8 Q. Well, let me ask you this. Did  
9 you participate in discussions during this  
10 workshop?

11 A. In some capacity, perhaps. It  
12 was a long time ago.

13 Q. Discussions about VCM?

14 MR. LEVINE: Objection.

15 THE WITNESS: That's what the  
16 workshop was for.

17 QUESTIONS BY MR. GOMEZ:

18 Q. And that's generally how The  
19 Chlorine Institute works, right?

20 There are small groups that  
21 have discussions, and then they put together  
22 literature based on that, right?

23 A. Yes.

24 Q. No reason to believe that there  
25 was any different process for the creation of



1 Pamphlet 171.

2 Right?

3 MR. LEVINE: Objection.

4 THE WITNESS: You'd have to ask  
5 Chlorine Institute on -- I mean,  
6 because this isn't the only pamphlet  
7 that they produced.

8 You asked earlier, how did they  
9 do it. If this was part of it, I'll  
10 take, you know, this PowerPoint as,  
11 you know, some memory of that, but  
12 you'd have to ask The Chlorine  
13 Institute on how they prepare their  
14 pamphlets.

15 QUESTIONS BY MR. GOMEZ:

16 Q. How long have you been a member  
17 of The Chlorine Institute?

18 A. It's been a long time. I first  
19 joined them in my former employer before  
20 starting SPSI. So it's been, you know, a  
21 minimum of 25 years or so or more.

22 Q. And do you know how they go  
23 about creating their pamphlets?

24 A. As I say, I just knew it's a  
25 group think. I know it's by committee. And

1     how they actually put them together, you  
2     know, I'm not the guy that does the typing.

3             Q.       Did you have any input into  
4     reviewing the information that ultimately  
5     went into Pamphlet 171 before it was  
6     published?

7             A.       I didn't even remember being  
8     there until this morning, so your memory here  
9     just brought me rough memory to the event.

10            So I don't recall.

11            (McCarty Exhibit 5 marked for  
12     identification.)

13     QUESTIONS BY MR. GOMEZ:

14            Q.       You can put that one aside,  
15     sir. We'll bring up Document Number 32,  
16     which we'll mark as Exhibit 5.

17            Actually, strike that. We're  
18     not going to mark Document 32 as Exhibit 5.  
19     Instead, we're going to mark Document 137 as  
20     Exhibit 5. 137 as Exhibit 5.

21            Okay. We've got it published.

22            Mr. McCarty, Exhibit 5 to your  
23     deposition, that is Pamphlet 171 from The  
24     Chlorine Institute.

25            Right?

1 A. Yes.

2 Q. And the title of it is "Vinyl  
3 Chloride Monomer (VCM) Tank Car & Cargo Tank  
4 Handling Manual, Edition 1."

5 Right?

6 A. Yes.

7 Q. From July 2018?

8 A. Yes.

9 Q. Is this --

10 A. I'm sorry, my microphone.

11 Go ahead.

12 Q. Is this document, Exhibit 5,  
13 Pamphlet 171 from The Chlorine Institute, a  
14 document that SPSI considered in the course  
15 of responding to the East Palestine  
16 derailment?

17 A. Yes.

18 Q. I want to direct your attention  
19 to Section 2.3, which appears on page 4.  
20 It's marked in the top left-hand corner.

21 Do you see that?

22 A. Yes.

23 Q. Section 2.3 reads,  
24 "Polymerization and Other Reaction  
25 Considerations."

1 Right?

2 A. Yes.

3 Q. And the second paragraph says,  
4 "Exposure to the following conditions or  
5 mixtures with the following elements and  
6 materials can cause explosive or violent  
7 polymerization of VCM."

8 Did I read that right?

9 A. Yes.

10 Q. And one of the conditions noted  
11 is excessive heat.

12 Right?

13 A. Yes.

14 Q. These statements that I just  
15 read in Section 2.3 of Pamphlet 171, were  
16 they considered by SPSI in the course of  
17 responding to the East Palestine derailment?

18 A. Yes.

19 Q. Pamphlet 171 does not explain  
20 or define what excessive heat is.

21 Right?

22 A. I'd have to review the whole  
23 pamphlet, but I don't believe it does.

24 Q. What did you, in the course of  
25 the East Palestine derailment, take excessive

1 heat to mean in this document?

2 A. You know, I'm going to -- I'm  
3 going to go back to your previous question.

4 I can't remember if it was this  
5 document or another document that talked  
6 about if any temperatures are above ambient,  
7 it was an indicator. I read that somewhere  
8 in one of the documents. I can't remember if  
9 it was this one or not.

10 But there was clearly some  
11 guidance document that I read that weekend  
12 that said anything above ambient could be a  
13 sign of polymerization.

14 Q. Okay.

15 A. I don't remember if it was this  
16 document or another document.

17 Q. So whether it's this document  
18 or another, you have a recollection of a  
19 document talking about if the temperature is  
20 above ambient, that that could be a sign of  
21 polymerization.

22 Is that fair?

23 A. Yes, fair.

24 Q. But in terms of this  
25 Section 2.3, there's no clear definition of

1 excessive heat.

2 We can agree on that, right?

3 MR. LEVINE: Objection.

4 THE WITNESS: I'm going to have  
5 to read the section here.

6 QUESTIONS BY MR. GOMEZ:

7 Q. And I'm just referring to 2.3.  
8 Feel free to read through it.

9 A. No, that section does, you  
10 know, in a couple of paragraphs on page 5,  
11 reference some potential scenarios from  
12 59 degrees Fahrenheit to 406.4 degrees  
13 Fahrenheit.

14 And then further heating above  
15 676.4 Fahrenheit can start causing peroxides  
16 to decompose, which we were seeing in the  
17 fires. There was a lot of fire and a lot of  
18 free radical -- fire itself is a free radical  
19 production, right? It's -- there's a lot of  
20 stuff going on there.

21 Q. So in connection with the  
22 reference to excessive heat in 2.3, this  
23 Pamphlet 171, on page 5, does talk about  
24 certain heat ranges.

25 Right?

1           A.       In 2.3, if you read on to the  
2     page 5, it does reference, "In particular, at  
3     59 degrees Fahrenheit to 406 degrees  
4     Fahrenheit, UV can initiate a reaction  
5     between VCM and excessive oxygen and produce  
6     peroxides. It's also commonly referred to as  
7     polyperoxides, polyvinyl peroxides," yada  
8     yada yada.

9                        So then further heating, which  
10    in this case in East Palestine there was  
11    tremendous heat, tremendous fire, we would  
12    have had temperatures well above 676 for  
13    several hours in those fires.

14          Q.       So let me take just a quick  
15    step back.

16                    These two heat ranges that you  
17    just referenced, were those -- was that  
18    information from this Pamphlet 171 that SPSI  
19    considered in the course of the -- responding  
20    to the derailment?

21          A.       Not very specifically to  
22    reference these paragraphs in specific, no.  
23    It's back to the general training we had all  
24    these years about the fire.

25          Q.       Got it.

1                   Looking at that second  
2   reference to a specific heat range, "Further  
3   heating to 676.4 degrees Fahrenheit,  
4   358 degrees Celsius, causes peroxides to  
5   decompose to formaldehyde, carbon monoxide  
6   and hydrogen chloride. Peroxides may also  
7   cause uncontrollable polymerization reactions  
8   at high concentration or temperatures."

9                   Did you understand that section  
10   to refer to the temperature of the fires or  
11   the temperature of the VCM product?

12           A.       Temperatures of the fires at  
13   the pressure relief devices and the service  
14   equipment that were inherently at the  
15   interface of the vapor phase of that product  
16   in the car. Peroxides can be generated in  
17   those interface areas.

18                   And the answer to your question  
19   is, all the above.

20           Q.       "All the above" meaning what?

21           A.       Fires are generating that heat.

22           Q.       Uh-huh.

23           A.       The process of the fires had a  
24   potential to generate these chemical  
25   reactions. With the presence of these



1 peroxides, even in small amounts around the  
2 service equipment, can be a factor in  
3 triggering polymerization.

4 Everything that the producers  
5 have taught us about safe handling of vinyl  
6 chloride? I've had a producer representative  
7 on-site concerned about 3 ounces of water  
8 that came out of a pristine stainless steel  
9 hose that had just been hydro-tested and was  
10 concerned that three drops of water that  
11 wouldn't even have wet the bottom of a shot  
12 glass be enough to trigger polymerization.

13 So any and all of that stuff  
14 just further adds to our emergency response  
15 experiences. It's just risk that we have of  
16 potential for polymerization formation at  
17 that interface.

18 Q. So I just want to go back to  
19 the heat ranges specifically that are  
20 referenced here.

21 If I understood your testimony  
22 just now correctly, the guidance provided in  
23 this Section 2.3 of Pamphlet 171 is if  
24 that -- is if the fires are themselves  
25 heating to 676.4 degrees Fahrenheit, that

1 alone is a cause for concern of  
2 polymerization.

3 Right?

4 A. In the event when the fire is  
5 burning the vinyl chloride from its service  
6 equipment and vinyl chloride is involved in  
7 fire, yes.

8 Q. Okay. Can you explain to me  
9 what you mean by that?

10 A. I just did in the previous  
11 answer --

12 Q. Okay.

13 A. -- so it's on the record.

14 Q. Okay. Help me understand.  
15 What is the difference in your mind between  
16 the fires being -- or the fires burning at  
17 776.4 {sic} degrees Fahrenheit and the  
18 temperature of the VCM in the railcars as it  
19 relates to this Section 2.3?

20 MR. HANSON: Objection.

21 THE WITNESS: We had no good,  
22 accurate way to gauge temperatures of  
23 the product in the cars because we  
24 never had a safe access to most of  
25 those cars.

1                   The formation of peroxides that  
2           this is referring to, and of these --  
3           these other reactions could trigger  
4           polymerization throughout the car? We  
5           had a firm belief and a risk  
6           assessment that it was possible and  
7           probable that everywhere where the gas  
8           gets in things with the service  
9           equipment, seals on the pressure  
10          relief devices, when they got  
11          compromised and were burning in the  
12          process of fire, pulling oxygen out of  
13          the atmosphere to make fire in the  
14          fire triangle, at those interface  
15          areas, this could be happening.

16   QUESTIONS BY MR. GOMEZ:

17           Q.       This could be happening. That  
18          the product could be heating to 776 {sic}  
19          degrees or the heat at that range was enough  
20          to lead to these conditions?

21                   MR. LEVINE: Objection.

22                   THE WITNESS: I want to listen  
23          to your question again. I'm sorry.  
24          The -- your question was?

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Let me read it back.

3 So is it your understanding,  
4 using the temperature range here referenced  
5 in Pamphlet 171, that if the fires were  
6 reaching the temperatures referenced here,  
7 676.4 degrees Fahrenheit specifically, all of  
8 these other interactions could occur, leading  
9 to polymerization within the VCM railcar?

10 A. All it would take would be one  
11 of these, not necessarily all.

12 And your question about the  
13 temperatures as related to and speculation on  
14 what's in the car, I can't speculate what the  
15 temperatures were in the car after a  
16 tremendous pool fire for a sustained amount  
17 of time.

18 What I know of tank cars, and I  
19 know them pretty well, the flame impingement  
20 thermal protection offered to tank car safety  
21 is to protect emergency responders in that  
22 first 100 or so minutes of a response.

23 Q. Okay.

24 A. All bets are off for how long  
25 thermal protection holds out heat after that.

1 Hot-temperature fires, a lot  
2 hotter than 676 degrees Fahrenheit, a lot  
3 hotter than that, burned for a very long  
4 period of time underneath those cars.

5 How that radiant heat  
6 penetrated the cars? There was no good way  
7 to measure that.

8 Q. So you take this sentence we've  
9 been referring to on page 5 of Pamphlet 171  
10 to be, and I want to be absolutely clear, a  
11 reference to the temperature of the fire the  
12 VCM cars were exposed to, not the temperature  
13 of the VCM product itself?

14 MR. LEVINE: Objection.

15 THE WITNESS: I'm not saying  
16 that, no. That's not what I'm saying.

17 QUESTIONS BY MR. GOMEZ:

18 Q. Well, you keep referencing  
19 fires that are burning hotter than this. So  
20 how do I -- let me --

21 A. I'm simply trying to answer  
22 your question.

23 Q. Let me ask the question this  
24 way.

25 Reading that paragraph that

1 we've just been discussing, right, further  
2 heating to 676.4 degrees Fahrenheit, 358  
3 Celsius, do you interpret that as referring  
4 to the temperature of the fire or the  
5 temperature of the VCM product?

6 A. In emergency response, the risk  
7 assessment in pool fires and compressed gas  
8 tank cars, the temperature of the fire, flame  
9 impinging on -- just like I say, neutral to  
10 VCM for a minute. Any compressed gas tank  
11 car. That is a tremendously hot fire burning  
12 for a long period of time, heating up the  
13 contents in that package. There was no good  
14 way to measure that.

15 This reference document  
16 suggests that if we have heat greater than  
17 that, it can decompose and have these other  
18 risks.

19 Q. Heat greater to that in what?  
20 The fire or the product itself?

21 A. The product itself had the  
22 potential to heat up more than that in a  
23 sustained pool fire.

24 Q. Okay. So this is referring to  
25 the temperature of the product, not the

1 temperature of the fires?

2 A. That's what the document is  
3 referring to, the temperature of the product.

4 My point is, there was no way  
5 to measure that.

6 Q. So you don't take exception to  
7 the heat range that's referenced here. The  
8 issue instead was whether or not you were  
9 able to get accurate readings of the  
10 temperature of the product in the derailed  
11 VCM cars?

12 MR. LEVINE: Objection.

13 THE WITNESS: Yeah, rephrase  
14 your question.

15 QUESTIONS BY MR. GOMEZ:

16 Q. Yeah.

17 A. I'm not sure I followed your  
18 question.

19 Q. So it's not that the section  
20 we're reading here on page 5 of Pamphlet 171  
21 isn't accurate or good information. The  
22 issue is that in East Palestine, you couldn't  
23 get reliable readings of what the temperature  
24 of the product -- the VCM product was?

25 MR. LEVINE: Objection.

1 MR. HANSON: Objection.

2 Answer, if you can.

3 THE WITNESS: I mean, that's --  
4 we could never get correct readings.

5 In emergency response, you have  
6 containers like this of flammable,  
7 compressed gases in a pool fire? It's  
8 an inherent risk. It's truly that  
9 simple. It's an inherent risk.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Let's go to the next page, 2.6,  
12 Temperature Considerations.

13 Do you see that?

14 A. I'm sorry, which section?

15 Q. Sure. Page 6, 2.6, Temperature  
16 Considerations, right at the top.

17 A. Okay.

18 Q. You with me on that section?

19 A. 2.6, yes, sir.

20 Q. Yep.

21 First sentence says, "In  
22 typical VCM plant operations, VCM process  
23 temperatures range between ambient  
24 temperature 68 degrees Fahrenheit and  
25 300 degrees Fahrenheit while contained under



1 pressure."

2 Did I read that correctly?

3 A. Yes.

4 Q. Is the temperature at which VCM  
5 is processed while under pressure, referenced  
6 here on page 6 of Pamphlet 171, a piece of  
7 information that you considered in the course  
8 of responding to the East Palestine  
9 derailment?

10 A. Well, the entire pamphlet was  
11 reviewed, so I'll say yes.

12 Q. So you can say, yes, 2.6, the  
13 information we just read is data that you  
14 considered when responding to the East  
15 Palestine derailment?

16 A. Yes.

17 Q. Okay. Let's keep going in the  
18 document, if you will, to -- let's see. It's  
19 page 49.

20 MR. HANSON: The page numbers  
21 are on the top left.

22 MR. GOMEZ: They alternate  
23 between the left and the right side of  
24 the page.

25 MR. HANSON: Oh, sorry.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Do you see that?

3 A. Yes.

4 Q. Page 49, it's Appendix C -  
5 Vapor Pressure for Vinyl Chloride.

6 Right?

7 A. Yes.

8 Q. And this Appendix C, as part of  
9 Pamphlet 171, if it was considered in its  
10 entirety, would have been -- would have been  
11 included in the information that SPSI used in  
12 responding to the East Palestine derailment.

13 Right?

14 A. Yes.

15 Q. Looking at this vapor pressure  
16 curve for vinyl chloride, you'd agree with me  
17 that generally as temperature increases, so  
18 too does pressure.

19 Right?

20 A. Yes.

21 Q. And the converse is accurate,  
22 right?

23 As temperature decreases,  
24 pressure decreases, right?

25 A. In most compressed gases,

1     that's an accurate statement.

2             Q.       In most compressed gases.

3                     Which compressed gases is that  
4     not an accurate statement?

5             A.       Things that are polymerizable  
6     and could be polymerizing in the package  
7     after you reduce -- after you reduce  
8     temperature and you still have an increase in  
9     pressure, that's another classic sign we've  
10    been trained in, and polymerization can be  
11    occurring.

12            Q.       Where specifically did you  
13    receive that training?

14            A.       From producers. Through The  
15    Chlorine Institute. That's a -- all the  
16    above, for 35 years of running.

17            Q.       So it's your testimony that  
18    training you've received from producers over  
19    the course of your career indicates that if a  
20    material is undergoing polymerization, there  
21    can be a temperature decrease without a  
22    corresponding pressure decrease?

23            A.       In the sense of a lot of  
24    materials can polymerize from the outside in,  
25    that's correct.

1                   And in the perspective of back  
2   to not being able to get intrusive  
3   thermometers in through thermometer wells, we  
4   could not get a good reading of internal  
5   liquid temperatures.

6                   The only car that we could get  
7   a point-and-shoot-thermometer on was that  
8   western car.

9           Q.       Western car would have been --

10          A.       I don't remember the car  
11   number.

12          Q.       Well, we'll talk about those  
13   shortly.

14                  But I just want to make sure  
15   that I understand exactly where you're  
16   getting this pressure and temperature  
17   relationship from in connection with  
18   polymerization.

19                  So this would have come  
20   directly from training provided to you by  
21   producers.

22                  Fair?

23          A.       Yes.

24          Q.       Do you recall which producers?

25          A.       It's a long -- from Dow

1 Chemical to Rohm and Haas to The Chlorine  
2 Institute member companies. It's a -- it's a  
3 wide variety.

4 Q. Do you -- do you recall the  
5 names of anyone specifically that gave you  
6 training on this concept or this principle?

7 A. David Ghormley, Rohm and Haas.  
8 Barry Lindley, DuPont.

9 Those two come to mind.

10 Q. And that training that you  
11 received from these individuals -- I won't  
12 read their names again -- was that specific  
13 to polymerizing VCM?

14 A. No, just monomers in general.

15 Q. Just referring back to the  
16 vapor pressure curve for vinyl chloride that  
17 we see here in Appendix C, there's a  
18 reference to PRDs start to discharge setting  
19 to 47.5 PSI.

20 Do you see that?

21 A. Yes.

22 Q. And according to this chart,  
23 that would correspond with a temperature of  
24 roughly 180 to 190 degrees.

25 Is that fair?

1           A.       Yeah, just above 180, it looks  
2 like, yes.

3           Q.       So according to this chart,  
4 when a PRD set to 247.5 PSI start to  
5 discharge, is activating, the minimum  
6 temperature within the vessel is 180 to  
7 190 degrees.

8                   Right?

9           A.       That can generally track within  
10 a margin of error, yes, that's correct.

11          Q.       How big is that margin of  
12 error, in your experience?

13          A.       It's different for a lot of  
14 different conditions. I can't -- it's -- you  
15 can't have an absolute on that.

16          Q.       What are some of the conditions  
17 that dictate how that changes?

18          A.       Fire.

19          Q.       Fire causes heat.

20                   Right?

21          A.       Yes.

22          Q.       Heat increases temperature.

23                   Right?

24          A.       Yes.

25          Q.       And there's a relationship

1 between temperature and pressure.

2 A. Yes.

3 Q. Right?

4 In fact, there's a law of  
5 chemistry that speaks to this. It's called  
6 Boyle's law.

7 Are you familiar with that?

8 A. Yes.

9 Q. Okay. So what are the  
10 conditions that would alter Boyle's law that  
11 there's a relationship between temperature  
12 and pressure increase?

13 MR. LEVINE: Objection.

14 THE WITNESS: It's  
15 chemistry-specific. And to further  
16 help you under -- I mean, we put  
17 pressure gauges on cars on an  
18 80-degree Fahrenheit day. If you look  
19 at a chart like this, at 80 degrees  
20 Fahrenheit, the pressure gauge should  
21 say this, and it might be 10 PSI off.

22 QUESTIONS BY MR. GOMEZ:

23 Q. Okay. So that's the margin of  
24 error that we're talking about?

25 A. In one particular random

1 example.

2 Q. Okay. Tell me the other  
3 conditions that can affect --

4 A. The chemistry of every product  
5 is slightly different.

6 Q. That's why you have different  
7 pressure curves for different products.

8 A. That's correct.

9 Q. Right?

10 So what conditions, other than  
11 different chemicals and fire, can alter what  
12 Boyle's law predicts here for VCM?

13 MR. HANSON: Objection.

14 THE WITNESS: Like I said, I'm  
15 not a chemist. I'm not going to  
16 speculate on my guesses. I'm not  
17 going to guess.

18 QUESTIONS BY MR. GOMEZ:

19 Q. But you're using the existence  
20 of those conditions to judge whether or  
21 not -- or how the product is behaving within  
22 the vessel.

23 Aren't you?

24 A. It's one element in a complex  
25 recipe.



1 Q. Okay. And for that element, if  
2 you don't understand the chemistry, you don't  
3 understand how the element's actually  
4 reacting or causing a reaction within the  
5 vessel?

6 MR. HANSON: Objection.

7 THE WITNESS: Yeah, as I say,  
8 I'm not going to agree with that  
9 question because it's leading.

10 But what -- can you restate the  
11 question?

12 QUESTIONS BY MR. GOMEZ:

13 Q. Yeah.

14 If you don't understand the  
15 chemistry about how certain conditions affect  
16 the reactivity or the behavior of a chemical,  
17 then how can you use those conditions to  
18 dictate your conclusions about how the  
19 chemical is behaving within the vessel?

20 MR. HANSON: Objection.

21 MR. LEVINE: Objection.

22 THE WITNESS: You're pretty  
23 much accusing me of not knowing the  
24 behaviors of vinyl chloride in a flame  
25 impingement condition vessel.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Well, you told me that you  
3 don't know the chemistry of VCM.

4 A. No, I told you I understand the  
5 chemical characteristics of VCM from a risk  
6 management perspective and emergency  
7 response.

8 Q. Okay. Explain to me the  
9 polymerization chemistry of VCM.

10 A. I'm not a chemist.

11 Q. Explain to me the  
12 polymerization chemistry of VCM.

13 MR. HANSON: Objection.

14 THE WITNESS: I am not a  
15 chemist.

16 QUESTIONS BY MR. GOMEZ:

17 Q. So you're not able to describe  
18 to me the polymerization chemistry of VCM.

19 Right?

20 A. I'm not a chemist.

21 Q. Is the answer yes or no, can  
22 you explain to me the chemistry behind the  
23 polymerization of VCM?

24 A. Not in detail.

25 Q. Okay. So you can't tell me how

1 different conditions affect the chemistry  
2 behind the polymerization of VCM.

3 Right?

4 MR. LEVINE: Objection.

5 MR. HANSON: Objection.

6 THE WITNESS: Wrong.

7 QUESTIONS BY MR. GOMEZ:

8 Q. All right. On what training?

9 A. 35 years of emergency response  
10 experience, a host of training from a host of  
11 a lot of good people in the chemical  
12 industry.

13 Q. Okay. That has nothing to do  
14 with the polymerization chemistry of VCM.

15 Right?

16 MR. LEVINE: Objection.

17 THE WITNESS: It has a lot to  
18 do with the emergency response  
19 conditions in a flame-impinged tank  
20 car with polymerizable, flammable,  
21 compressed gas.

22 QUESTIONS BY MR. GOMEZ:

23 Q. So you're an expert in  
24 emergency response with respect to  
25 flame-impinged tank cars and VCM, but you're

1 not a chemical expert on what the reactivity  
2 of VCM is.

3 Right?

4 MR. LEVINE: Objection.

5 THE WITNESS: I'm not a  
6 chemist.

7 QUESTIONS BY MR. GOMEZ:

8 Q. Okay. And a chemist is  
9 required to understand how different  
10 conditions impact the reactivity and  
11 polymerization of VCM.

12 Do you agree with that?

13 MR. LEVINE: Objection.

14 THE WITNESS: A chemist should  
15 understand the polymerization process  
16 if that chemist is producing polymers  
17 with that chemical.

18 QUESTIONS BY MR. GOMEZ:

19 Q. And do you, as an emergency  
20 response professional, understand the  
21 polymerization chemistry of VCM?

22 A. I'm not a chemist.

23 MR. LEVINE: Objection.

24 QUESTIONS BY MR. GOMEZ:

25 Q. So the answer is no?

1           A.       No, that answer is not no.

2           Q.       Okay. Why can't you answer  
3   that question yes or no? What is it about  
4   the question that prevents you from answering  
5   it yes or no?

6                   MR. LEVINE: Objection.

7                   THE WITNESS: Because I'm not a  
8   chemist.

9   QUESTIONS BY MR. GOMEZ:

10          Q.       And you would have to be a  
11   chemist to understand the polymerization  
12   chemistry of VCM.

13                   Do you agree with that?

14                   MR. LEVINE: Objection.

15                   THE WITNESS: In detail -- this  
16   is what you're fishing for. In  
17   detail, I'm not a chemist.

18   QUESTIONS BY MR. GOMEZ:

19          Q.       And because you're not a  
20   chemist, you don't understand how different  
21   conditions impact the polymerization  
22   chemistry of VCM.

23                   Right?

24                   MR. LEVINE: Objection.

25                   MR. HANSON: Objection.

1 THE WITNESS: I understand  
2 heat, possible formations of  
3 peroxides, contaminants. Everything  
4 that all these data are telling us  
5 that were risks to us is what we went  
6 on.

7 QUESTIONS BY MR. GOMEZ:

8 Q. So you understand that these  
9 factors could contribute to polymerization,  
10 but you don't know how they contribute to  
11 polymerization?

12 MR. LEVINE: Objection.

13 THE WITNESS: We understand  
14 from an emergency response experience  
15 basis that any number of these factors  
16 present a risk to us and the community  
17 of East Palestine.

18 QUESTIONS BY MR. GOMEZ:

19 Q. But you don't know how they  
20 present a risk?

21 MR. LEVINE: Objection.

22 MR. HANSON: Objection.

23 THE WITNESS: They can trigger  
24 polymerization.  
25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Because that's a conclusion  
3 that has been shared with you.

4 But you don't understand how  
5 they can trigger polymerization?

6 A. I am not a chemist.

7 Q. And that's why you don't know  
8 how they cause polymerization.

9 Right?

10 MR. HANSON: Objection.

11 MR. LEVINE: Objection.

12 THE WITNESS: You're asking me  
13 to say right and yes and agree with  
14 you, and I'm just telling you, I'm not  
15 a chemist. And I don't need to  
16 understand every little molecular  
17 nuance of a reaction.

18 QUESTIONS BY MR. GOMEZ:

19 Q. So it's your testimony that you  
20 don't need to know how chemicals react in  
21 order to deal with them in a hazardous  
22 situation?

23 MR. HANSON: Objection.

24 THE WITNESS: I did not say  
25 that. No, that's not my statement.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Is it your statement that you  
3 have enough chemical training to understand  
4 the reactivity of different chemicals in  
5 hazardous material situations?

6 A. Rephrase your question, please.

7 Q. Is it your testimony that you  
8 have enough chemical training to understand  
9 the reactivity of chemicals in various  
10 hazardous situations?

11 A. That's a broad-brush question  
12 covering a whole lot of chemicals. I'm not  
13 an expert in all chemicals all across the  
14 world, no. Not in all chemicals across the  
15 world, as you phrased the question.

16 Q. Okay. How about VCM?

17 A. I'm pretty well-versed in VCM.  
18 I have a pretty good amount of VCM  
19 experience.

20 Q. Yeah.

21 You've never responded to a  
22 situation where VCM was actually polymerizing  
23 before East Palestine, though.

24 Right?

25 A. No, I didn't.



1 Q. Okay. So it's all based off of  
2 your training.

3 Right?

4 A. Training and other responses.

5 Q. Training which doesn't include  
6 reactivity chemistry.

7 Right?

8 MR. LEVINE: Objection.

9 THE WITNESS: No, training that  
10 does include reactivity training.

11 QUESTIONS BY MR. GOMEZ:

12 Q. Okay. Who gave you chemistry  
13 reactivity training?

14 A. As I say, various producers. I  
15 mentioned one. You asked about SERTC.  
16 Previous to that was TTCI.

17 Reactivity is covered in those  
18 kind of programs.

19 Q. Okay. And they explained to  
20 you the chemistry behind it.

21 Right?

22 A. Fundamental basic side of it.

23 Q. They explained to you how  
24 various conditions alter or affect  
25 polymerization of VCM?

1           A.       Those trainings produced  
2       conditions in which polymerization is  
3       possible, not in the details in which it  
4       happens.

5           Q.       Those trainings produced  
6       conditions in which polymerization is  
7       possible? I don't understand that.

8                   MR. LEVINE: Objection.

9                   THE WITNESS: The trainings  
10       presented conditions in which  
11       polymerization was possible.

12       QUESTIONS BY MR. GOMEZ:

13           Q.       And not explanations about how  
14       it actually makes polymerization possible.

15                   Fair?

16           A.       Those are emergency response  
17       training sessions, and they're geared towards  
18       the non-chemist emergency responders, so --

19           Q.       They're not geared towards  
20       explaining to you how the reactions occur --

21           A.       Molecular chemistry, correct.

22           Q.       -- right?

23                   If you needed to understand how  
24       different conditions affect how  
25       polymerization occurs, you'd need to consult

1 with a chemist.

2 Right?

3 MR. LEVINE: Objection.

4 MR. HANSON: Objection.

5 THE WITNESS: If those micro  
6 details were necessary, yes.

7 QUESTIONS BY MR. GOMEZ:

8 Q. But you don't have enough  
9 training to know whether those micro details  
10 actually matter.

11 MR. HANSON: Objection.

12 MR. LEVINE: Objection.

13 THE WITNESS: In emergency  
14 response, it's a complex recipe of a  
15 lot of factors, including the most --  
16 just -- sometimes you get into the  
17 weeds with those micro details, and  
18 sometimes it's not necessary.

19 QUESTIONS BY MR. GOMEZ:

20 Q. You ever hear of the phrase  
21 "the devil's in the details"?

22 MR. LEVINE: Objection.

23 MR. HANSON: Objection.

24 THE WITNESS: I have heard that  
25 phrase.

1 QUESTIONS BY MR. GOMEZ:

2 Q. Yeah. What does it mean?

3 A. I honestly don't know.

4 Q. You don't know what the devil's  
5 in the details means?

6 A. I've heard it, but I can't  
7 explain how it would be interpreted. I don't  
8 know.

9 Q. You don't take it to mean that  
10 the smallest detail can mean the biggest  
11 difference?

12 MR. HANSON: Objection.

13 THE WITNESS: I never thought  
14 about it.

15 QUESTIONS BY MR GOMEZ:

16 Q. So you don't think that what  
17 happened in East Palestine required a mastery  
18 of the details in order to respond to the  
19 incident?

20 MR. HANSON: Objection.

21 THE WITNESS: Yeah, that's a  
22 pretty, pretty loaded question.

23 There was a team effort from a  
24 lot of people at East Palestine.

25 There was plenty of opportunity for a

1 lot of people to have insight.

2 QUESTIONS BY MR. GOMEZ:

3 Q. Including insight from the  
4 people who were experts on the polymerization  
5 chemistry of VCM.

6 Right?

7 A. That's correct.

8 Q. And who told you it wasn't  
9 polymerizing.

10 Right?

11 A. There was one person in Dallas  
12 that just didn't think it was polymerizing.  
13 Didn't think it was polymerizing.

14 Q. It wasn't one person, right?  
15 It was a whole team in Dallas?

16 A. Well, it was one particular  
17 person that the team was leaning on on that  
18 phone call.

19 Q. Okay. So because one person  
20 spoke and said it, you took it to mean that  
21 it was only one person's opinion?

22 A. I don't -- I can't speak to  
23 Occidental's group think. I just can speak  
24 to the people that was in East Palestine with  
25 us that were surprised to hear that position

1 from Dallas.

2 Q. So you can't speak to the  
3 people who were on the phone in Dallas?

4 A. I don't -- I can't. I can't  
5 speak to, you know -- they believe their  
6 stabilized vinyl chloride wasn't going to  
7 polymerize because they put nitrogen in it.

8 Q. That was the reason they told  
9 you, was because it was stabilized with  
10 nitrogen; therefore, polymerization could not  
11 happen?

12 A. That's exactly my understanding  
13 from that phone call, yes.

14 Q. They didn't tell you that it  
15 couldn't polymerize because heat alone  
16 doesn't polymerize VCM?

17 A. No. I don't remember those  
18 details from that conversation, no.

19 Q. Those are important details to  
20 understanding whether their advice was valid.

21 Right?

22 MR. HANSON: Objection.

23 MR. LEVINE: Objection.

24 THE WITNESS: I would say I  
25 didn't -- they didn't emphasize it

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1 enough for me to have a takeaway on  
2 it.

3 QUESTIONS BY MR. GOMEZ:

4 Q. Okay. Did you consult with any  
5 product experts, experts in VCM, in the  
6 course of responding to the East Palestine  
7 derailment besides anyone from Oxy in the  
8 field or in Dallas?

9 A. Just Oxy.

10 Q. So there was no other product  
11 manufacturer that you consulted with?

12 A. No.

13 Q. Do you know if anyone within  
14 SPSI, other than yourself, consulted with  
15 another product manufacturer?

16 A. No.

17 Q. Do you know whether anybody  
18 working with you on the SRS team consulted  
19 with product manufacturers other than Oxy?

20 A. I understand Chip Day reached  
21 out to a contact he had at Westlake.

22 Q. And what is your understanding  
23 of what information, if any, was provided to  
24 Chip Day from that contact?

25 A. The general, just confirming

1     our risk.

2             Q.       What risk is that?

3             A.       That these cars could likely be  
4     polymerizing.

5             Q.       And did you at any point relay  
6     the information you received from that  
7     contact to the folks in Dallas that were  
8     representing Oxy?

9             A.       I did not. I didn't have that  
10    conversation. That would be a question for  
11    Chip Day.

12            Q.       Do you think it's important or  
13    would have been important for Oxy in Dallas  
14    to hear that other product manufacturers were  
15    reaching different conclusions about  
16    polymerization?

17                   MR. LEVINE: Objection.

18                   THE WITNESS: We had Occidental  
19                   on the ground with us at East  
20                   Palestine that had conflicting  
21                   thoughts from the people in Dallas  
22                   that were 2,000 miles away.

23                   With conflicting information,  
24                   unlike any other -- you look at a  
25                   NIOSH guidebook for a recommendation



1 on respiratory protection on any given  
2 chemical. OSHA says one thing, NIOSH  
3 says another, we go with the more  
4 conservative.

5 So when we have conflicting  
6 information and a ton of risk  
7 presenting to us, it's all one big  
8 factored-in equation. That's the real  
9 answer.

10 QUESTIONS BY MR. GOMEZ:

11 Q. So did you understand the Oxy  
12 folks that were on the ground to be separate  
13 from the folks in Dallas as far as providing  
14 advice?

15 MR. LEVINE: Objection.

16 THE WITNESS: They're  
17 representing Occidental.

18 QUESTIONS BY MR. GOMEZ:

19 Q. Yeah. I guess let me ask it --  
20 let me ask the question a little bit  
21 differently.

22 What made you choose to put  
23 more stock in what you were hearing from the  
24 folks that were on the ground from Oxy as  
25 opposed to people you were talking to in

1 Dallas from Oxy?

2 MR. LEVINE: Objection.

3 THE WITNESS: I'd say when we  
4 have a conflict -- when there's a  
5 conflict, and I've got someone that  
6 I've trained with for years and  
7 they're a strike team leader -- this  
8 is a gentleman that they've empowered  
9 as a corporation to run their Oxy  
10 strike team. With their products.  
11 He's, in my mind, a subject matter  
12 expert on emergency response to his  
13 products. He clearly communicated the  
14 same concern we all had.

15 That's a conflict. And when  
16 you have conflict of information, I'm  
17 not willing to put the City of East  
18 Palestine in jeopardy of conflicting  
19 information.

20 QUESTIONS BY MR. GOMEZ:

21 Q. You're referring specifically  
22 to Justin Cox.

23 A. Yes.

24 Q. Right?

25 So Justin Cox had a -- if I'm

1 understanding you correctly, had a  
2 conflicting opinion with the folks in Dallas.

3 Is that correct?

4 A. Yes.

5 Q. And was that about --  
6 specifically about whether polymerization was  
7 occurring in the cars?

8 A. Yes.

9 Q. Did he ever tell you that you  
10 shouldn't rely on the opinions from the folks  
11 in Dallas and instead take his opinion?

12 MR. HANSON: Objection.

13 THE WITNESS: No, he never used  
14 those words, no.

15 QUESTIONS BY MR. GOMEZ:

16 Q. Okay. Did you ask him, Justin,  
17 what do I do? You're telling me one thing;  
18 the guys in Dallas are telling me another?

19 A. No.

20 Q. Why not?

21 A. The conversation we had was  
22 brief. We were in a rental car, SRS rental  
23 car, with that call. And transitioned from  
24 that call, went to our ops trailer, and there  
25 was the three Oxy guys in our response

1 trailer, and they asked us how that phone  
2 call went.

3 We told them that, well,  
4 there's somebody in Dallas that doesn't  
5 believe you're polymerizing because you  
6 stabilize it with nitrogen, which we've seen  
7 leaving the car since Friday night in the PRD  
8 releases.

9 And his reaction was just in  
10 disbelief that somebody actually said that.

11 Q. So his reaction, you're  
12 referring to Justin Cox.

13 Right?

14 A. Yes.

15 Q. So Justin Cox wasn't even on  
16 the phone call --

17 A. No.

18 Q. -- with the folks in Dallas --

19 A. No.

20 Q. -- who he supposedly disagreed  
21 with?

22 A. Correct. None of those guys  
23 were on that call.

24 Q. Did you ask Justin to confer  
25 with his colleagues back in Dallas to see

1 whether they could get on the same page about  
2 whether polymerization was occurring?

3 A. No, we did not ask him that.

4 Q. Why not?

5 A. That call was done. This  
6 communication happened. It's two separate  
7 communications. It causes conflict.

8 Q. If the product manufacturer has  
9 got two teams that are giving you conflicting  
10 advice about the most critical issue facing  
11 these VCM tank cars, wouldn't it occur to you  
12 to try and get some clarity on what the  
13 company's official position is?

14 MR. HANSON: Objection.

15 MR. LEVINE: Objection.

16 THE WITNESS: No. In emergency  
17 response, you know, you take all of  
18 the information, all of the combined  
19 information.

20 QUESTIONS BY MR. GOMEZ:

21 Q. Oxy is a customer of SPSI.

22 Isn't it?

23 A. Yes, it is.

24 Q. You have a direct line to Oxy.

25 Right?

1           A.       Yes, I do.

2           Q.       Did you ever pick up the phone  
3 and call those folks?

4           A.       I was texted by their corporate  
5 guy, who must have got a ChemCheck  
6 notification, and I think that conversation  
7 started -- I can't even remember now --  
8 Saturday at some point, I believe.

9           Q.       Okay. And using that direct  
10 line, did you ever pick up the phone and say,  
11 I'm getting two different sets of information  
12 from your teams; tell me which one is  
13 accurate?

14          A.       When Oxy presented that  
15 information, it would have been, I believe,  
16 Sunday morning. And we asked Oxy on that  
17 phone call, okay, if you don't believe it's  
18 polymerizing, what should we do. We asked  
19 them, okay, in lieu -- let's assume you're  
20 right. We asked Oxy, let's assume you're  
21 right and it's not polymerizing, what can we  
22 do?

23                   And this is the sound you heard  
24 for minutes. Not a word. There was no  
25 ideas. That's on the record.

1 Q. No ideas about what to do --

2 A. No recommendations. None.

3 Q. So because thermometers give  
4 you alternative options, you discounted their  
5 conclusion that polymerization wasn't  
6 happening?

7 MR. HANSON: Objection.

8 THE WITNESS: We did not. We  
9 respected their input. We did not --  
10 we never discarded anybody's input.  
11 We factored in everyone's input into  
12 the massive equation of Norfolk  
13 Southern's, you know, thought process  
14 and the incident commander's process.  
15 It was one factor in a complex --

16 QUESTIONS BY MR. GOMEZ:

17 Q. Who else had input on the  
18 question of whether polymerization was  
19 occurring?

20 MR. LEVINE: Objection.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Well, let me rephrase that.  
23 Oxy had input.  
24 Right?

25 A. Yes.

1 Q. You had input.

2 Right?

3 A. Yes.

4 Q. Chip Day had input.

5 Right?

6 A. Yes.

7 Q. Who else had input on whether  
8 polymerization was occurring in the railcars?

9 MR. LEVINE: Objection.

10 THE WITNESS: I mean --

11 MR. GOMEZ: What's the basis  
12 for the objection?

13 MR. LEVINE: You're asking  
14 about who has input on what? For who?

15 MR. GOMEZ: On whether  
16 polymerization was occurring in the  
17 VCM cars.

18 MR. LEVINE: I have input. Who  
19 else has input.

20 MR. GOMEZ: Sure. Okay.

21 That's a fair point. I can rephrase  
22 that.

23 QUESTIONS BY MR. GOMEZ:

24 Q. Between February 3rd and  
25 February 6th, right, in your position with



1     SPSI, beyond Oxy, yourself and Chip Day, who  
2     else gave specific input on polymerization of  
3     the VCM cars?

4             A.       I mean, the Norfolk Southern  
5     HAZMAT staff. There were Ohio EPA response  
6     guys. There were Pennsylvania DEP response  
7     guys. There were local emergency management  
8     agency officials. US EPA responders showed  
9     up. There was a whole host of people.

10            Q.       Okay. Let's go one by one.  
11                    Who from Norfolk Southern  
12     HAZMAT gave specific insight on whether  
13     polymerization was occurring in the VCM cars?

14            A.       I communicated a lot with Scott  
15     Deutsch and Scott Gould on their HAZMAT  
16     squad.

17            Q.       Okay. What did Scott Deutsch  
18     and Scott Gould tell you about whether  
19     polymerization was occurring in the VCM cars?

20            A.       We talked through it together,  
21     specifically after the -- whatever 5 or  
22     6 p.m. event where the one car behind Leake  
23     Oil kind of took off in a radical behavior  
24     late Saturday afternoon. That's when we had  
25     some varied thought process, okay, here's

1     this, here's this, what if this, what if  
2     that.

3                     So Scott Deutsch and Scott  
4     Gould were the first two from Norfolk  
5     Southern's HAZMAT.

6                     Now, beyond them leaving my  
7     trailer and talked among their staffs, I  
8     don't know who all they discussed it amongst  
9     their staffs. I don't know.

10            Q.       Okay. Fair to say those are  
11     the two that you recall from Norfolk Southern  
12     that gave input on polymerization? As you  
13     sit here today, at least.

14            A.       Yes.

15            Q.       Okay. Scott Deutsch, Scott  
16     Deutsch a chemist?

17            A.       I don't know.

18            Q.       You ever work with Scott  
19     Deutsch before?

20            A.       Yes.

21            Q.       You don't know Scott Deutsch's  
22     background?

23            A.       Predominantly fire service, but  
24     like -- I mean, there's been people in my  
25     career that have surprised me. People like

1 Tim Mannas, now retired; Hank Cox, now  
2 retired. I come to find out late in my  
3 career after working with them for 10 or 15  
4 years that they were chemists. I never knew  
5 it.

6 Q. Scott Deutsch never told you,  
7 you know, here's my insight on VCM  
8 polymerization; by the way, I'm a chemist?

9 A. I've never remembered Scott  
10 Deutsch telling me he was a chemist. I know  
11 he came out of the chemical plant industry.  
12 He was the fire chief at a chemical plant for  
13 a while in his career.

14 Q. Okay. Not everyone that works  
15 in the chemical plant is a specialist in the  
16 reactivity of chemicals.

17 Right?

18 A. That's accurate.

19 Q. Scott Gould, Scott Gould a  
20 chemist?

21 A. I don't believe so.

22 Q. Did you ever talk to any  
23 chemist employed by Norfolk Southern  
24 regarding polymerization between February 3rd  
25 and February 6th?

1           A.       I'm not familiar with any  
2 chemists that Norfolk Southern has on staff.

3           Q.       Let's see. You also mentioned  
4 Ohio EPA response guys.

5                   Who were the Ohio EPA response  
6 guys that had input on whether polymerization  
7 was occurring in the railcars?

8           A.       I'm trying to remember who was  
9 there.

10                   Kurt Koehler would have been  
11 there from Ohio. I believe Don Bialosky from  
12 Pennsylvania DEP.

13                   And they would have known --  
14 like I say, they had the consist Friday night  
15 because we were working it together.

16           Q.       Let's start with Kurt Koehler.  
17                   What's Kurt Koehler's  
18 background?

19           A.       He is, as I understand it, the  
20 head of the Ohio EPA response group.

21           Q.       If you know, what does the Ohio  
22 EPA response group do?

23           A.       They handle emergency responses  
24 for anything spilled in the state of Ohio.

25           Q.       Kurt Koehler a scientist?

1           A.       I don't know his background.

2           Q.       Did he ever volunteer that he  
3 was a scientist?

4           A.       Not that I can recall.

5           Q.       Did he ever volunteer that he  
6 was a chemist specifically?

7           A.       No, I don't recall.

8           Q.       What was the insight Kurt  
9 Koehler provided about whether polymerization  
10 was occurring in the cars?

11          A.       That wasn't your question. You  
12 asked who else would have had insight. And  
13 everybody at the unified command post would  
14 have had their own research, their own  
15 insights, their own ideas.

16          Q.       That's my question now, though.  
17 My question now is, what were the insights  
18 Kurt Koehler provided about whether  
19 polymerization was occurring in the cars?

20          A.       I don't know. You'd have to  
21 ask Kurt Koehler.

22          Q.       But you did talk to Kurt  
23 Koehler about polymerization in the cars?

24          A.       Not specifically.

25          Q.       Okay. There was a gentleman

1 from the PA DEP whose name I can't find at  
2 the moment.

3 Can you -- can you reiterate  
4 his name?

5 A. Well, Don Bialosky is their  
6 kind of head of response, and I know he was  
7 there at least early on.

8 Q. Did Don Bialosky give any  
9 insight or input on whether polymerization  
10 was occurring in the cars?

11 A. Not that I can recall.

12 Q. Local emergency officials also  
13 gave specific input on polymerization of the  
14 VCM cars.

15 Who were they?

16 A. I don't know who you're  
17 referring to. I don't know.

18 Q. I'm reading back your  
19 testimony.

20 My question was, between  
21 February 3rd and February 6th, in your  
22 position with SPSI, beyond Oxy, yourself and  
23 Chip Day, who else gave specific input on  
24 polymerization of the VCM cars?

25 And you responded, in part,

1     there was emergency -- there was local  
2     emergency officials.

3             A.       Those are the kind of people --  
4     the Don Bialoskys, the -- those are the kind  
5     of guys I'm referencing.

6             Q.       Okay. You also mentioned US  
7     EPA responders specifically.

8                     Who from US EPA gave specific  
9     input on polymerization of the VCM cars?

10            A.       Yeah, I don't -- I don't  
11    remember. If I said US EPA, I just meant  
12    that they were there.

13            Q.       So let me put a fine point on  
14    it and ask it this way.

15                    Beyond Oxy, yourself, Chip Day,  
16    who gave an opinion, yes, polymerization is  
17    occurring in those cars, no, polymerization  
18    is not occurring in those cars, between  
19    February 3rd and February 6th?

20            A.       The Norfolk Southern HAZMAT  
21    staff comes to mind.

22            Q.       The ones we just discussed?

23            A.       Yeah.

24                    MR. GOMEZ: Can we go off the  
25    record for a second?

1                   VIDEOGRAPHER: We are off the  
2                   record at 11:48.

3                   (Off the record at 11:48 a.m.)

4                   VIDEOGRAPHER: We are now back  
5                   on the record at 12:29.

6                   QUESTIONS BY MR. GOMEZ:

7                   Q.       Mr. McCarty, we're back from  
8                   our lunch break, and I want to shift gears to  
9                   some of your observations from between the  
10                  evening of the 3rd through the -- through the  
11                  6th in East Palestine.

12                  Am I correct that you first  
13                  arrived on-scene in the evening of  
14                  February 3rd?

15                  A.       Yes.

16                  Q.       Is that around nine or ten  
17                  o'clock at night?

18                  Is that right?

19                  A.       No. I can't remember what time  
20                  I got on-site.

21                  Q.       When you got on-scene, there  
22                  were still first responders that were set up  
23                  with offensive operations in connection with  
24                  the pool fires and the like?

25                  A.       Yes, that's correct.



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1           Q.       About how long after you first  
2 arrived on-scene do you recall the first  
3 pressure relief devices activating on the  
4 vinyl chloride cars?

5           A.       It's hard to estimate. I can't  
6 remember how long it took us to do a quick  
7 assessment and find -- and actually find the  
8 commander to encourage them to back out and  
9 then get them back out.

10                   It was about 30 minutes or so  
11 after they had gotten everybody in the clear,  
12 and I don't remember the exact timeline on  
13 that.

14           Q.       Okay. Do you -- understanding  
15 that it's hard to pinpoint a specific time,  
16 do you know if it was still the evening of  
17 February 3rd or maybe the early morning hours  
18 of February 4th when the PRDs started to  
19 activate?

20           A.       It's possible it was between 11  
21 and midnight or between midnight and 1. It  
22 could be in that era. It would have been in  
23 that era.

24           Q.       Fair enough.

25                   I want to kind of walk through

1 each of the vinyl chloride cars, east to  
2 west, in their position in the derailment  
3 pile so that we can talk about the PRDs. I  
4 just want to orient you to that kind of  
5 structure.

6 My understanding, again, east  
7 to west, is that the first vinyl chloride car  
8 in the derailment pile was the TILX402025.

9 Does that -- does that sound  
10 right?

11 A. That sounds right. The TILX  
12 car was the eastern-most car by itself.

13 Q. Is that the car that was  
14 referred to from time to time as the "white  
15 car"?

16 A. I don't remember referring to  
17 them as white and black, but somebody could  
18 have.

19 Q. Okay. That TILX402025, I'm  
20 going to call that, just for these purposes,  
21 the first car.

22 Okay?

23 A. Okay.

24 Q. That first vinyl chloride car,  
25 do you have a specific recollection of when

1 the PRD began to cycle on that particular  
2 car?

3 A. That one we don't think ever  
4 did.

5 Q. Fair enough.

6 Moving to the next car, again,  
7 east to west. It's my understanding that the  
8 second car would be OCPX80235.

9 Is that correct?

10 A. I don't have the map of the car  
11 layouts in front of us, but, you know, again,  
12 if you're looking at it --

13 Q. I do have a composite of an  
14 aerial image. We can mark it. I only have  
15 one copy, but we'll just use it to refresh  
16 your recollection --

17 A. Sure.

18 Q. -- and orient you to the -- to  
19 the circumstances.

20 (McCarty Exhibit 6 marked for  
21 identification.)

22 QUESTIONS BY MR. GOMEZ:

23 Q. And again, Mr. McCarty, I'm not  
24 going to ask you questions about that  
25 document, but if helps with kind of orienting

1 the position of the cars when we're referring  
2 to them, I'm happy to have it in front of  
3 you.

4 Okay?

5 A. Okay.

6 Q. By reference to that document  
7 which we've marked Exhibit 6, does it look  
8 like OCPX80235 was the next car in the  
9 derailment pile left -- east to west?

10 A. It looks like it's the 29th car  
11 as this -- OCPX80235. That would have been  
12 the second car in from the east.

13 Q. Okay. Do you have a specific  
14 recollection of when the PRD for that second  
15 car began activating?

16 A. Yeah, that one we didn't think  
17 ever did. That was a little unnerving to us  
18 because it was in that big pool fire and  
19 wasn't activating for any -- any drone  
20 footage that we had that I recall looking at  
21 in the drone assessments or from driving by  
22 on Taggart Road. We think that one was just  
23 heat-impinged and didn't vent, is what our  
24 concern was.

25 Q. Okay. So I want to try and

1 keep this kind of organized as we're going  
2 through this exercise.

3 So far we've got TILX402025,  
4 which to your understanding or to your  
5 knowledge didn't activate.

6 Correct?

7 A. That's my recollection.

8 Q. And the same holds true for  
9 OCPX80235, the second car east to west.

10 Right?

11 A. That second car in, correct,  
12 yeah.

13 Q. The next car -- the next VCM  
14 car in the derailment pile east to west would  
15 have been OCPX80179.

16 Is that correct?

17 A. Yes. Looking at this map,  
18 that's correct.

19 Q. And do you have a specific  
20 recollection of when that third car, the PRD  
21 began to activate?

22 A. Between the three other ones --  
23 I don't remember which of the two. They're  
24 the 30th and the 31st car. I don't remember  
25 which one went first. But those two started

1 venting, like I say, not long after the  
2 firemen cleared up from the area.

3 Q. So that would be that --  
4 roughly that estimate of between 11 and  
5 midnight on the 3rd or midnight and 1 on the  
6 4th.

7 Right?

8 A. Correct. It was most likely  
9 closer to 11 to midnight, as I recall.

10 Q. And can you describe for me as  
11 best you recall -- well, let me -- let me  
12 withdraw that and ask -- and ask this.

13 Once the PRD on that third car  
14 began activating, again, between 11 and  
15 midnight on February the 3rd, as best you can  
16 estimate, did it continue to activate or  
17 cycle continuously into the next day?

18 A. It cycled through the night,  
19 all night Friday into Saturday, yes.

20 Q. And at what point on Saturday,  
21 February 4th, do you recall the PRD on that  
22 particular car stopping in activation  
23 recycling?

24 A. It was sometime midday, kind of  
25 between noon and 3-ish, something like that.

1 It was like midday. Call it like 11 to  
2 3-ish. Again, we weren't exactly taking  
3 timestamp kind of notes.

4 Q. Yeah. And all I'm asking you  
5 for is your best estimates as to these kind  
6 of time frames.

7 A. Yes.

8 Q. Okay?

9 Now between, again, best  
10 estimate, 11 to 12 on February 3rd and midday  
11 February 4th, can you describe for me what  
12 kind of interval the PRD was activating on  
13 this third VCM car?

14 A. It was just minutes. I mean,  
15 it was cycling. Just -- it was just minutes.  
16 It would open, vent, reclose. It would just  
17 keep doing that.

18 Q. Was it doing it on a consistent  
19 kind of interval or cycle?

20 A. We didn't have anybody close  
21 enough to observe. We were worried about the  
22 cars and putting people too close, so we  
23 never did stopwatch calculations or anything  
24 like that. It was just no way to observe it  
25 from a safe place.

1 (McCarty Exhibit 7 marked for  
2 identification.)

3 QUESTIONS BY MR. GOMEZ:

4 Q. I want to introduce  
5 Document 147, which we will mark as  
6 Exhibit 7.

7 It's a video, so we'll mark the  
8 slip sheet. But, Mr. McCarty, the video is  
9 going to actually play on the -- on the  
10 screen in front of you.

11 A. Okay.

12 Q. While we're pulling up the  
13 video itself, I'll just read into the record  
14 that the Bates number for the video is SPSI  
15 TEXTS 000043.

16 We can just play that start to  
17 finish.

18 (Video played.)

19 Q. Mr. McCarty, just take a look  
20 at this video, and we'll watch it in its  
21 entirety, and then I'll have a few questions  
22 for you.

23 Mr. McCarty, do you have --  
24 well, the video that we just watched,  
25 Exhibit 7, that's the pressure relief device



1 on one of the derailed railcars in the East  
2 Palestine pileup activating.

3 Fair?

4 A. Yes.

5 Q. Do you have any idea which  
6 specific car that video shows the PRD  
7 activating or cycling on?

8 A. Not from that video. I  
9 couldn't tell you.

10 Q. And also probably fair to say  
11 that you can't tell from that video at what  
12 point during what day that particular PRD was  
13 cycling.

14 Right?

15 A. Correct.

16 Q. So with the understanding that  
17 you might not know which specific car and  
18 when exactly that video took place, can you  
19 say whether that video is a fair depiction of  
20 how the PRDs were activating for the VCM cars  
21 between February 3rd and February 4th?

22 A. Overnight Friday night into  
23 Saturday, that's correct. It was relieving  
24 and cycling, relieving and cycling.

25 Q. So over this period, the video,

1 Exhibit 7, is a general depiction of how they  
2 were behaving.

3 Fair?

4 A. Yes.

5 Q. We were discussing the third  
6 car in the derailment pileup. I want to move  
7 to the next one.

8 The fourth car east to west  
9 would have been GATX95098.

10 Is that correct?

11 A. Excuse me, yes.

12 Q. And for that fourth car, do you  
13 have a specific recollection as to when it  
14 started activating? When the PRD started  
15 activating?

16 A. In close proximity to the other  
17 ones.

18 And the west car was in the  
19 same arena as well. They all -- they all  
20 started activating in a similar time frame  
21 that evening.

22 Q. Understood.

23 So when you referenced the west  
24 car just now, that would be the fifth car in  
25 the -- the fifth VCM in the pileup,

1 OCPX80370?

2 A. Correct.

3 Q. Okay. So we can lump those two  
4 together for purposes of these questions.

5 They both would have -- the  
6 PRDs on both would have started activating  
7 around the same time as the car we just  
8 discussed, OCPX80179, the third in the  
9 derailment pile?

10 A. In that general 11 p.m. to  
11 1 a.m. range, yes.

12 Q. How about when they stopped  
13 discharging for the fourth and the fifth car?  
14 Would they have also stopped discharging  
15 roughly midday, 11 to 3, on February 4th?

16 A. I can't recall if any one  
17 stopped sooner than the other ones. I don't  
18 recall.

19 Q. Going back to the video for a  
20 second -- and we can replay it if you need me  
21 to replay it.

22 The behavior of the PRD that we  
23 see in that video, Exhibit 7, did that  
24 behavior indicate to you that polymerization  
25 was occurring in the VCM railcars?

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1           A.       At that time, not necessarily.

2           Q.       So if Exhibit 7, the video that  
3 we just looked at, shows the PRD activation  
4 up until midday February 4, 2023, there was  
5 not a concern, based off of how the PRDs were  
6 activating in that manner, that  
7 polymerization was occurring in the cars.

8                   Is that fair?

9           A.       At that timeline in the  
10 accident, the direct correlation in our minds  
11 was the flame impingement that had that --  
12 there was a tremendous amount of combustible  
13 flammable liquids that had been spilled by a  
14 number of general service tank cars that had  
15 been pretty much, you know, heating those  
16 cars, building internal pressure, causing  
17 those pressure relief devices to activate.

18          Q.       Where polymerization really  
19 started to become a concern, correct me if  
20 I'm wrong, was with the sudden activation of  
21 the PRD on the third VCM railcar after it had  
22 ceased operating midday February 4th.

23                   Right?

24          A.       As I understand your question,  
25 when were we concerned about polymerization?

1           Q.       Yeah. So let me -- let me  
2 break it down and make it a little bit easier  
3 for all of us to understand.

4                   There -- at the time that the  
5 PRDs on the three western-most VCM cars had  
6 roughly stopped cycling, midday February 4,  
7 2023, the thought was the PRDs are activating  
8 because of heat impingement, not because of  
9 polymerization.

10                   Right?

11           A.       That was the primary, initial  
12 assessments, but I'm going to get back to  
13 your question and the reason I asked you to  
14 clarify it.

15                   I believe you asked -- and  
16 please correct me if I'm wrong. I believe  
17 you asked, when were we concerned about  
18 polymerization?

19           Q.       That's where I'm ultimately  
20 going, yes.

21                   MR. HANSON: Drew, just let him  
22 ask his questions. I think he's  
23 trying to make it easier on you. Just  
24 let him ask his questions and try to  
25 answer them. So let's just --

1 THE WITNESS: Okay.

2 MR. HANSON: -- listen to  
3 Mr. Gomez's question.

4 THE WITNESS: I'm just making  
5 sure I'm getting your question right.

6 QUESTIONS BY MR. GOMEZ:

7 Q. And there's a ton of moving  
8 parts to this, so if you don't understand  
9 what I'm referencing in terms of the timeline  
10 or the cars, just let me know. I'm happy to  
11 break it up so that we're all on the same  
12 page.

13 So I'll just go back and kind  
14 of start the line again.

15 Midday February 4th, Saturday,  
16 the three western-most VCM cars' PRDs stopped  
17 activating.

18 Best you recall, right?

19 A. Yes.

20 Q. And at that point in time, the  
21 understanding was they had been activating  
22 because they were heat-impinged, not because  
23 they were actively polymerizing.

24 Is that fair?

25 A. In that era of the derailment,

1 we concurred and we absolutely acknowledged  
2 that they were activating because they were  
3 building internal pressure. They were in  
4 pool fires. That made perfect sense.

5 Q. Okay. Where, after they had  
6 stopped cycling, midday February 4, 2023,  
7 polymerization then became a concern was that  
8 third car in the pileup had a sudden and I  
9 think you characterized it as a violent  
10 activation.

11 Is that correct?

12 A. That car did have a sudden and  
13 violent activation.

14 And back to your root question.  
15 Once we realized Friday night with drone  
16 flyover that the vinyl chloride cars were  
17 involved in pool fires, that's when we first  
18 became concerned of the possibility of  
19 polymerization.

20 So that's the -- what I wanted  
21 to get on the record with your question, and  
22 why I asked you to repeat and make sure I  
23 understood your question is, when were we  
24 concerned about polymerization?

25 We were on the radar with the

1 possibility, based on all the training, all  
2 the data sheets, everything we know about  
3 vinyl chloride being possible, that once we  
4 recognized and had drone flight confirmation  
5 that we have these cars in pretty serious  
6 fires, that's when it was first on our radar  
7 for concern.

8                   And then to finish answering  
9 your question, the event that happened with  
10 that particular car that we're talking about,  
11 that third one in, that's what really had us,  
12 you know, now really concerned.

13               Q.       You described that better than  
14 I could ask questions, so thank you very  
15 much.

16               A.       You're welcome.

17               Q.       It clarifies it.

18                       So now I just want to focus  
19 just on that third car, OCPX80179, and the  
20 sudden and, again, as you've characterized  
21 it, violent activation in the afternoon of  
22 February 4th.

23                       Okay? We're oriented on the  
24 same page?

25               A.       Yeah.



1 (McCarty Exhibit 8 marked for  
2 identification.)

3 QUESTIONS BY MR. GOMEZ:

4 Q. Okay. Let me -- let's bring up  
5 Document Number 163, which we'll mark as  
6 Exhibit 8. And this is another video.

7 And I'll note for the record  
8 while we're pulling it up and getting it  
9 marked that the Bates number is SPSI TEXTS  
10 000380.

11 Mr. McCarty, the video is going  
12 to play on your screen in a second. We'll  
13 watch it through its entirety, and then I'll  
14 ask you my questions.

15 Okay?

16 A. Okay.

17 (Video played.)

18 Q. Mr. McCarty, the video we just  
19 watched in Exhibit 8, are you able to tell  
20 from what's depicted there whether this is  
21 the PRD activating on OCPX80179 suddenly and  
22 violently in the afternoon of February 4,  
23 2023?

24 A. Not without watching it through  
25 its conclusion.

1 Q. Well, I'll represent --

2 A. The video concluded, but I  
3 don't know how long that burned.

4 Q. Understood.

5 I'll represent to you that we  
6 played the entirety of the video, so I just  
7 want to make sure that we're all clear.

8 Based off of what we've got  
9 here in Exhibit 8, you can't tell whether  
10 this is the third car in the derailment pile  
11 activating -- the PRD activating in the  
12 afternoon of February 4, 2023?

13 A. Well, it appeared to be the  
14 third car, but I don't know when that was  
15 taken.

16 Q. Okay. So timing aside, as best  
17 you can tell, Exhibit 8 does depict the PRD  
18 on the third car activating.

19 Fair?

20 A. It is the third car activating.

21 Q. We can play it again just to  
22 make sure. And I'm not trying to trick you  
23 here.

24 I want to understand if there's  
25 anything from this video, which is what we've

1 got, that can lead you to confirm or not  
2 confirm if this was the sudden and ac -- the  
3 sudden and violent PRD activation in that  
4 third VCM car.

5 A. This video wouldn't be able to  
6 do that.

7 Q. Fair enough.

8 So we can pull that down.

9 Thank you.

10 A. Okay.

11 Q. So it was the -- it was the  
12 activation and extended activation of the PRD  
13 on this third VCM car that made -- I don't  
14 want to misquote you -- that made  
15 polymerization a serious concern in the  
16 afternoon of February 4th.

17 Right?

18 A. Yeah. It took it from a  
19 possibility the night before to something on  
20 the radar to be a situation where of to a  
21 probability based on how these cars were  
22 behaving at that time.

23 Q. And the reason for that is your  
24 training tells you that if a PRD is  
25 activating as intended, or behaving as it

1 should, suddenly stops and then activates for  
2 an extended period without any change in  
3 circumstances, there could be an indication  
4 of a chemical reaction occurring in the tank  
5 car.

6 Is that fair?

7 A. Most of what you said is  
8 accurate, yes.

9 Q. What part is not accurate so we  
10 can have a clear record?

11 A. It's just incomplete of all the  
12 variables.

13 Q. Okay. What are the other  
14 variables?

15 A. So you mentioned, you know,  
16 PRDs activating and then reclosing. And then  
17 they don't.

18 The variables in this case  
19 were, you know, pool fires underneath the  
20 car, i.e., in the lab environment would turn  
21 off the Bunsen burner, take heat away. That  
22 would explain why they're not going off  
23 anymore.

24 Okay?

25 That made us comfortable in

1     that afternoon era to put people in there in  
2     the hot zone, start putting pressure gauges  
3     on cars, start looking and seeing what we  
4     could do with hot-tapping and where to put  
5     burn pits. That was that objective of that  
6     entry in the middle of the afternoon.

7                     The phenomenon of what happened  
8     there was in the absence of a pool fire,  
9     there was still continuous pressure building  
10    up in the car. And what was more unnerving  
11    was that car had been relieving itself  
12    regularly for several hours.

13                    The audible sound in the  
14    relief, just as a -- as we referred to this  
15    morning, the Matheson Gas charts and the  
16    pressure and temperature curves, so do  
17    audible sounds from the same orifice. We had  
18    incredibly higher audible sound in that  
19    release at whatever time it was, 5 or 6 p.m.,  
20    whatever times they have it, and it sustained  
21    for over an hour.

22                    Those were inherently different  
23    conditions than what we had experienced in  
24    that previous operating period.

25                    So, fundamentally, you know,

1 potential causes of that are, something  
2 caused that PRD to get gummed up and get  
3 stuck while that pressure was building up,  
4 and it relieved at a higher pressure.

5 Any fire impingement from  
6 others -- the other fires. A number of  
7 variables, but I'm getting a little winded  
8 here.

9 Q. Sure.

10 And to kind of unpack that a  
11 little bit, ultimately what you concluded was  
12 most like -- the most likely explanation for  
13 that extended PRD activation was that the  
14 device itself was getting gummed up from the  
15 formation of polymers.

16 Is that correct?

17 A. Is one possibility.

18 Q. There were other possibilities  
19 that describe -- or that explained the  
20 behavior of that PRD.

21 Right?

22 A. Could be.

23 Q. One of them could be radiant  
24 heat being absorbed by that third tank car.

25 Correct?

1           A.       Well, this one was one that was  
2     burning and cycling for several hours. So  
3     this had basically been a blowtorch device  
4     for several hours.

5           Q.       So I want to make sure that  
6     we're clear.

7                   Is it your understanding that  
8     under the conditions as they existed at the  
9     time of that extended relief from the third  
10    car, radiant heat could not be an explanation  
11    for why it discharged the way it did?

12          A.       The fires had subsided. There  
13    was no more Bunsen burner pool fire going on  
14    that would have created to build pressure in  
15    that car the way it did.

16                   And the point to be made here  
17    is -- let's say it was flame fire. Let's  
18    just hypothetically say it was radiant heat  
19    that caused it to build pressure again. It  
20    should have relieved to the same pressure and  
21    cycled like it did for the previous 12 hours.  
22    But instead, it accumulated and accumulated,  
23    accumulated, accumulated, accumulated,  
24    accumulated, and decided to find a magic  
25    point where it gave and then had a violent

1 release.

2 Q. Are you aware that Chip Day  
3 gave a statement to the NTSB in connection  
4 with its investigation of the derailment?

5 A. Yes.

6 Q. Are you aware that Chip Day  
7 cited radiant heat from the ground as a  
8 potential alternative explanation for why the  
9 PRD activated the way it did on this third  
10 car?

11 A. I -- I'm not privy to what Chip  
12 told the NTSB.

13 Q. Fair enough.

14 What about mechanical failure  
15 in the PRD device? Isn't that another  
16 explan -- possible explanation for why the  
17 device acted the way that it did?

18 A. It is one possibility.

19 Q. Because at least on this car,  
20 the PRD had been cycling actively for several  
21 hours.

22 Right?

23 A. Correct.

24 Q. And any mechanical device has a  
25 limit to how often it can cycle, right, how



1 often it can function?

2 A. I mean, any mechanical or --  
3 our automobile we drive every day can break,  
4 right? So any mechanical components, it's  
5 possible, yes.

6 Q. And especially when it's  
7 exposed to fire conditions, right?

8 Gaskets can get burned out,  
9 right?

10 A. Yes.

11 Q. All of which can affect the  
12 performance of the PRD for mechanical  
13 reasons, not polymerization reasons?

14 A. Well, gaskets being burned out,  
15 if anything, would allow pressure to escape  
16 the car, which is what was fueling the  
17 three-dimensional fuel-fed fires.

18 Q. Can you describe that for me a  
19 little bit more? Can you explain that for me  
20 a little bit more?

21 A. So the pressure relief devices  
22 are mounted to the pressure plates on these  
23 tank cars. There's tongue-and-groove mating  
24 surfaces, and they're sealed with gaskets,  
25 elastomers.

1                   In those fires, once those PRDs  
2     started, you know, relieving pressure, they  
3     instantly ignited with the ground fire. So  
4     they found ignition source and became  
5     blowtorches.

6                   As the PRDs became blowtorches,  
7     liquid lines, vapor lines, service equipment  
8     within that protective housing, they also got  
9     super-heated from that fire, and those  
10    elastomers failed.

11                  When those elastomers failed,  
12    more three-dimensional fuel-fed fires  
13    occurred within the protective housings.

14                  Q.     There's other components that  
15    could fail in the PRD to explain the behavior  
16    beyond just the gaskets.

17                  Right?

18                  A.     The PRD has a lot of  
19    components.

20                  Q.     Springs are components of the  
21    PRDs.

22                  Right?

23                  A.     Yes.

24                  Q.     What was it specifically that  
25    allowed you to rule out other possible

1 explanations for the PRD behavior on this  
2 third VCM railcar in favor of polymerization  
3 being the more likely explanation?

4 MR. HANSON: Objection, but  
5 please answer.

6 THE WITNESS: Yeah, we didn't  
7 rule out all those possibilities.

8 QUESTIONS BY MR. GOMEZ:

9 Q. Oh, okay.

10 But you did conclude that the  
11 most likely of all the explanations was  
12 polymerization.

13 Right?

14 A. Not necessarily. They're all  
15 options. They're all possibilities.

16 Q. Did --

17 A. Including polymerization was a  
18 strong possibility.

19 Q. Okay. At this point in time,  
20 the 70-minute PRD activation, did you have  
21 a -- did you have an opinion of which was the  
22 most likely explanation for why the PRD was  
23 acting the way it was?

24 A. You know, the fact that we had  
25 roaring, con -- sustained pool fires

1 underneath those cars all night long, and  
2 they were cycling, they would relieve and  
3 reclose, relieve, reclose, under tremendous  
4 heat, if Mr. Day testified to some smudge of  
5 a residual, charcoalish residual campfire  
6 heat kind of thing underneath the car, I  
7 guess I can't deny that is a probable  
8 possibility.

9 But the correlation is --  
10 doesn't jive. It doesn't match correlation  
11 to sustained, tremendous BTU fires all the  
12 through the night. And this PRD responded  
13 nicely to relieve and reclose, relieve and  
14 reclose, relieve and reclose.

15 And again, the correlation  
16 of -- fires burn themselves out, and all of a  
17 sudden this has such tremendous pressure  
18 buildup, it's essentially stuck. And for  
19 whatever reason, mechanical, polymerization  
20 or otherwise, polymerization is absolutely a  
21 consideration.

22 Q. So correct me if I'm wrong, it  
23 was at this point in time -- this point in  
24 time being the extended activation of the PRD  
25 on this third VCM car -- that hot-tapping

1     ceased being a viable option for addressing  
2     or mitigating the VCM cars.

3                     Is that correct?

4             A.       That is correct. That was our  
5     point of which we like, eh.

6             Q.       And is it also fair to say that  
7     when hot-tapping ceased being a viable option  
8     because of the PRD activation on this  
9     particular car, vent and burn became an  
10    option for consideration?

11            A.       Yes.

12            Q.       Do you have a sense of maybe an  
13    hour range on February 4th when this extended  
14    PRD release might have occurred?

15            A.       I've been told 5 p.m.-ish, and  
16    I know people have a video somewhere, and I  
17    know -- I probably have it from somebody  
18    giving it to me, but I don't remember -- I  
19    just don't remember the timestamp on it.

20            Q.       Is it fair to say that  
21    you're -- as you sit here right now, your  
22    best estimate might be around 5 p.m.,  
23    February 4th?

24            A.       That's my rough estimate.

25            Q.       And that would have been on

1 February 4, 2023.

2 Right?

3 A. That would have been the  
4 Saturday, yes.

5 Q. And the vent and burn occurred  
6 February 6, 2023, at approximately 4:30 in  
7 the afternoon?

8 A. Yes.

9 Q. So between when hot-tap stopped  
10 being an option for mitigating the VCM cars  
11 and when the VCM cars were vented and burned,  
12 roughly 48 hours?

13 A. Yes.

14 Q. A vent and burn is the option  
15 of last resort.

16 You agree with that?

17 A. Yeah, generic -- generally  
18 speaking, yes, it's the last resort. Nobody  
19 wants to go around doing emergency  
20 de-inventory on tank cars. Just by -- let's  
21 do this. You know, it's a last resort  
22 option.

23 Q. And it's the last resort in the  
24 case of VCM polymerization because if the VCM  
25 is actually polymerizing in the cars, there's

1 a corresponding increase with the pressure of  
2 the -- of the -- of the VCM in the vessel.

3 Right?

4 A. That's correct.

5 Q. And if that pressure continues  
6 to grow and grow and grow without any  
7 mitigation, the tank can blow apart.

8 Right?

9 A. Correct.

10 Q. And in addition to releasing  
11 the contents of the car, that blowing apart  
12 of the car as a result of increased pressure  
13 would send shrapnel flying through the area.

14 Fair?

15 A. Quite possible, yes.

16 Q. And because it's a chemical  
17 reaction, it has the ability to happen very  
18 quickly.

19 Is that fair?

20 A. Yes.

21 Q. So polymerization and the  
22 threat posed by polymerization, that's an  
23 imminent danger to the community if it causes  
24 the vessel to explode and send shrapnel  
25 everywhere.

1 Fair?

2 A. Yes.

3 Q. If the threat of polymerization  
4 occurring within the railcars was an imminent  
5 threat of that nature, why did it take  
6 48 hours to conduct the vent and burn?

7 A. A lot of moving parts and  
8 pieces. A lot of variables to that question.

9 Q. You did not present -- let me  
10 withdraw that.

11 Correct me if I'm wrong, the  
12 vent and burn as an option was not presented  
13 to incident command until the afternoon of  
14 February 5, 2023.

15 Is that correct?

16 A. That's my understanding.

17 Q. And that would be roughly  
18 24 hours after the extended PRD release of  
19 the third VCM car.

20 Correct?

21 A. I don't remember what time that  
22 meeting was. I -- whether it was 24 hours or  
23 18 hours or anywhere between, I don't  
24 remember that, but it would have been  
25 sometime Sunday afternoon.



1 Q. Understood.

2 What was the explanation, or  
3 what is the explanation, for why there was a  
4 delay of 24 hours in expressing vent and burn  
5 as the option for mitigating the VCM cars?

6 MR. LEVINE: Objection.

7 THE WITNESS: Yeah, so that was  
8 beyond my purview. I mean, I was  
9 working for the Norfolk Southern  
10 HAZMAT staff. We spoke about it, kind  
11 of thought through that option  
12 Saturday right after that PRD  
13 excursion that we're talking about.

14 And, you know, they as a staff  
15 called in SRS for some extra help,  
16 extra set of eyes.

17 And, you know, I can't speak to  
18 Norfolk Southern. I can't speak to  
19 their staff discussions. I can't  
20 speak to that.

21 QUESTIONS BY MR. GOMEZ:

22 Q. Okay. I don't want -- I don't  
23 want you to speculate as to the thought  
24 process from Norfolk Southern.

25 A. Okay.

1           Q.       Only what you -- only what you  
2    know.

3                   And would you say that you know  
4    that one of the reasons for waiting to  
5    present vent and burn as an option to the  
6    incident command was to get additional  
7    opinions on the condition of the site and the  
8    condition of the cars, including opinions  
9    from SRS?

10          A.       That was my feeling, yeah. I  
11    mean, and I didn't blame Norfolk Southern if  
12    they were looking for a second opinion.

13                  And that's my assumption. I  
14    can't say exactly what Norfolk Southern's  
15    thought process was, other than bringing in  
16    more experienced people. I mean, additional  
17    experienced people and extra set of eyes and  
18    extra qualified manpower.

19                  (McCarty Exhibit 9 marked for  
20           identification.)

21    QUESTIONS BY MR. GOMEZ:

22          Q.       Okay. Let's bring up Document  
23    Number 107, which we will mark as Exhibit 9  
24    to Mr. McCarty's deposition.

25                  Mr. McCarty, this Exhibit 9

1 that we've marked to your deposition, it's  
2 Bates numbers SPSI TEXTS 000512 through 513.

3 It appears to be a March 26,  
4 2023 text message exchange between yourself  
5 and Chip Day.

6 Is that correct?

7 A. Yes, appears to be.

8 Q. I want to direct your attention  
9 to the text message that's -- with a  
10 timestamp March 26, 2023, 10:08 p.m.

11 Do you see that? Right-hand  
12 side?

13 A. I was just reading along. I  
14 mean, I'm reading this page. I'm looking.

15 Q. Okay. Well, I'm going to ask  
16 you specifically with -- about the text  
17 messages starting at 10:08 p.m. so I can  
18 orient you to where I am on the document.

19 A. Okay. 10:08. Got it.

20 Q. Yeah. That text message that  
21 you sent to Chip Day reads, "Do you recall  
22 roughly when NS called you guys on  
23 February 4th and when you got to EP?"

24 Right?

25 A. Okay. Yes.

1 Q. And then Mr. Day responds  
2 laying out the timeline of when he arrived.

3 Right?

4 A. He arrived -- yeah, okay.  
5 Yeah.

6 Q. You respond, "Thank you," and  
7 Mr. Day responds back to that saying, "What's  
8 up now?"

9 Do you see that message?

10 A. Yeah, he probably was wondering  
11 why I was asking.

12 Q. That's what I was going to ask  
13 you. He wanted to know why you needed that  
14 information.

15 Right?

16 A. Yeah.

17 Q. And your response was that you  
18 have to do a presentation tomorrow.

19 Do you see that?

20 A. Yes.

21 Q. March 26, 2023, that would be  
22 the day before you did a presentation to the  
23 United States Senate on what happened in East  
24 Palestine.

25 Correct?

1           A.       Not the entire Senate. There  
2       was Senate Commerce -- I think they call them  
3       subcommittees, whatever their -- staffers for  
4       Senator Ted Cruz and the other senator out of  
5       State of Washington. I'm sorry, I don't  
6       remember her name. But, yeah, that's what it  
7       was for.

8           Q.       Yeah, that was inartful.  
9                    Not the entire US Senate,  
10       but --

11          A.       Right.

12          Q.       -- certain senators and the  
13       subcommittee.

14                   Fair?

15          A.       Correct.

16          Q.       Okay. And you then explain  
17       beyond the presentation that you, quote,  
18       "Basically want to get ahead of a question  
19       that could pop up...if you were already at  
20       V&B Saturday afternoon after the sudden and  
21       violent PRD 70-minute release, why wait till  
22       Sunday afternoon to present to fire chief  
23       staff? My response would be, such a  
24       significant decision, NS wanted to get more  
25       folks like you and Terry here for your

1     opinions as well before deciding that. I  
2     just wanted to make sure I had recalled the  
3     timeline correctly, and I believe I have it.  
4     All good."

5                     Did I read that correctly?

6             A.       Yes.

7             Q.       So this is what you just  
8     described your understanding to be. There  
9     was a delay because NS wanted additional eyes  
10    on the cars or eyes on the site to determine  
11    whether polymerization was occurring and then  
12    there was a need for a vent and burn.

13                    Fair?

14            A.       Other -- additional experienced  
15    people on-site, second opinions, more fire  
16    power, more -- more, you know -- more  
17    experienced folks on-site. All of the above.

18            Q.       And the people that you  
19    mentioned getting additional eyes on-site, at  
20    least in this text message, specifically  
21    include folks like Chip Day and Terry?

22            A.       Yes.

23            Q.       That's what we see there?

24            A.       Yes.

25            Q.       That would be Terry Rockwell.

1 Right?

2 A. Correct.

3 Q. There's no reference here to NS  
4 wanting to get more opinions from folks like  
5 the product manufacturers about the need for  
6 a vent and burn.

7 Right?

8 A. Not in my communication with  
9 Chip and I in this text messaging, no.

10 Q. And in this text messaging,  
11 there's no indication that NS wanted to get  
12 opinions from the railcar owners, for  
13 example, about whether there was a need for a  
14 vent and burn.

15 Right?

16 A. Well, that wasn't the nature of  
17 this texting communication. Had nothing to  
18 do with Norfolk Southern at that time. It  
19 was -- this was between Chip and I.

20 And I just simply asked Chip,  
21 this is my recollection. I wasn't privy to  
22 the conversations between Norfolk Southern  
23 and Chip Day. I wasn't -- that was between  
24 them.

25 I'm just pretty much asking

1     Chip, you know, I'm assuming they brought you  
2     in for a second set of eyes and extra help,  
3     and he confirmed it.

4             Q.        Yep.

5                     And all I'm asking you about is  
6     what you're saying in this particular text  
7     message.

8                     Right?

9             A.        Right.

10            Q.        So according to this text  
11     message, what NS wanted was insight from  
12     folks like Terry Rockwell and Chip Day.

13                     Right?

14            A.        Uh-huh.

15            Q.        And according to this text  
16     message, there's nothing in this message  
17     about NS wanting input from the product  
18     manufacturer.

19                     Right?

20            A.        Well, it wasn't the purpose of  
21     this message. But, no, there's no reference  
22     to that --

23            Q.        Just asking you about what the  
24     message says.

25                     There's no reference to NS



1     wanting to get input from the railcar owners.

2                     Right?

3             A.       In this conversation between  
4     Chip Day and Drew McCarty, this was not an NS  
5     communication.

6             Q.       There's no reference to wanting  
7     to get input from any independent experts.

8                     Right?

9             A.       This is a communication between  
10    Chip Day and Drew McCarty.

11            Q.       That's been well-established.  
12    I will give it to you.

13                    Right?

14            A.       Okay. I'm just not following  
15    your question, I guess.

16            Q.       This is a conversation that  
17    you're having with Chip -- with Chip Day, and  
18    I want to know what's in here and what's not  
19    in here.

20                    Okay?

21                    There's no reference to NS  
22    wanting to get insight from independent  
23    experts about polymerization in this text  
24    message.

25                    Right?

1           A.       In this text message, there is  
2 no reference to any Norfolk Southern  
3 communications at all.

4           Q.       And this is your text message  
5 to Chip Day for purposes of trying to  
6 understand and prepare a response to a  
7 question that might be posed by the US Senate  
8 subcommittee that you were making a  
9 presentation to.

10                   Right?

11           A.       Yes.

12           Q.       We can put that aside. Thank  
13 you.

14                   Now, during the -- or between  
15 the time of the extended PRD activation on  
16 February 4th in that third VCM railcar and  
17 the vent and burn, there were efforts  
18 undertaken to take temperature measurements  
19 from the VCM railcars.

20                   Correct?

21           A.       Correct.

22           Q.       And those efforts were  
23 undertaken because Oxy had indicated that the  
24 way to rule out definitively whether or not  
25 polymerization was occurring in those cars

1 was if there was an exothermic heat signature  
2 in those readings.

3 Correct?

4 MR. HANSON: Objection.

5 THE WITNESS: I don't know  
6 where the request came from, other  
7 than I was requested by the Norfolk  
8 Southern HAZMAT staff.

9 QUESTIONS BY MR. GOMEZ:

10 Q. Okay. Do you remember any  
11 conversations about the heat signature  
12 generated by VCM polymerization in the  
13 railcars with Oxy as a way of ruling in or  
14 ruling out whether polymerization was  
15 actually occurring?

16 A. Not specifically.

17 Q. You don't remember  
18 conversations where Oxy's technical advisors  
19 in Dallas indicated that polymerization could  
20 be ruled in -- or would be ruled in if there  
21 was a continuing increase in the temperature  
22 of the railcars?

23 A. I don't recall any specific  
24 conversation like that.

25 Q. And you don't recall any

1 specific conversation with the Oxy team in  
2 Dallas about how, if there were fluctuations  
3 in the temperature of the VCM cars, that is,  
4 temperature increases followed by decreases,  
5 followed by increases, that would rule out  
6 polymerization occurring in the cars?

7 A. I do not recall any  
8 conversations like that.

9 Q. You don't recall any  
10 conversations with the Oxy team in Dallas  
11 that if temperatures remained stable within  
12 the VCM cars, that would rule out  
13 polymerization occurring within the VCM cars?

14 A. They may or may not have  
15 mentioned that in one of the calls, but we  
16 already knew that from all years of training.  
17 Thermometers have to tell us that.

18 Q. If you don't recall specific  
19 conversations about how temperature data  
20 could rule in or rule out the occurrence of  
21 polymerization in the VCM cars, what was your  
22 understanding of why you were taking these  
23 temperature readings between February 4th and  
24 February 6th?

25 A. My understanding is because the

1 command post wanted Norfolk Southern to get  
2 temperature readings. That was my  
3 understanding.

4 Q. Command post being incident  
5 command?

6 A. Yes.

7 Q. And did you learn at any point  
8 in time what interest incident command had in  
9 these temperature readings?

10 I don't want you to speculate.

11 A. I was going to say, I'm not  
12 going to speculate. I mean, if I was the  
13 fire chief, I know what I would be thinking,  
14 just to try -- can anybody trend the  
15 temperatures, is a general request, right?  
16 But I can't speak to the fire chief.

17 Q. So as far as you know,  
18 temperatures were not being taken between  
19 February 4th and February 6th for purposes of  
20 monitoring or determining whether  
21 polymerization was actually occurring within  
22 the cars?

23 A. Prior to our entries into the  
24 hot zone on the afternoon of the 4th, on  
25 Saturday afternoon, our first entries, we had

1 digital thermometers with us during that  
2 entry. Unfortunately, we never really had a  
3 chance to use them before that PRD off {sic}  
4 and drove our people out of the hot zone.

5                   Once that PRD activated at what  
6 we -- whatever, four or five o'clock,  
7 whatever time it was on Saturday afternoon,  
8 four o'clock, five o'clock, six o'clock,  
9 whatever time it was, we avoided that hot  
10 zone. We didn't want anybody near those  
11 cars.

12           Q.       But you did go back into the  
13 hot zone to take these temperatures during  
14 that period.

15                   Right?

16           A.       We did.

17           Q.       I want to talk a little bit  
18 about the equipment that you had for purposes  
19 of taking these readings.

20                   It's my understanding that  
21 there were point-and-shoot thermometers  
22 available.

23                   Is that correct?

24           A.       Yes.

25           Q.       You know what models they were?

1           A.       It would be a variety, from  
2   Fluke to others, but...

3           Q.       There were thermal imaging  
4   thermometers.

5                    Is that correct?

6           A.       Yes.

7           Q.       Do you happen to know the  
8   manufacturers on the models that we used?

9           A.       I do know those ones. They're  
10   Draeger 9000s, I believe. I can get that  
11   data, but it's a Draeger unit.

12          Q.       And there were -- well, I'll  
13   represent to you that Mr. Day told us that  
14   there is some better technology available  
15   that can actually take measurements through  
16   jacketed installation on a tank car.

17                   Are you familiar with that kind  
18   of technology?

19          A.       I am not.

20          Q.       So we would have to talk to  
21   Mr. Day about specifically what that is.

22                   Right?

23          A.       Right.

24          Q.       Fair to say SPSI did not have  
25   access to any technology beyond the

1 point-and-shoot thermometer and the thermal  
2 imaging thermometer to gauge the temperature  
3 of the VCM in these insulated railcars?

4 A. In all my travels and all my  
5 years of experience, I'm not familiar with  
6 any technology that'll put a temperature  
7 through an eighth-inch outer steel jacket,  
8 through two inches of thermal protection,  
9 through two inches of insulation, to get  
10 through another tank wall thickness of the  
11 tank to get a product temperature. I'm not  
12 familiar with any such technology.

13 Q. Am I also correct that there  
14 was a combination of personnel from SPSI and  
15 SRS that were actually the ones during this  
16 roughly 48-hour period that were taking the  
17 temperatures in the hot zone?

18 A. It was our people. I don't  
19 believe SRS was doing the temperature  
20 readings.

21 Q. Okay. Would Ryan Tokarski have  
22 been one of those people?

23 A. Yes, he was in the first entry  
24 team that attempted.

25 Q. You know that Mr. Tokarski gave



1 a statement to the NTSB.

2 Right?

3 A. Yes.

4 Q. Have you familiarized yourself  
5 with that statement?

6 A. No, I actually have not read  
7 his testimony.

8 Q. Okay. Based off of what you  
9 know from being at the site, from speaking to  
10 Mr. Tokarski and others on the team, is it --  
11 am I correct that the reason why you were  
12 using these external measurers of the  
13 temperature in the tank cars is because there  
14 was damage to the thermal wells?

15 A. There was burned-out damage to  
16 these cars that we were afraid could lift  
17 their PRDs at a moment's notice, just like  
18 the car misbehaved. There was no way we were  
19 going to put a human being on top of those  
20 tank cars.

21 Q. Okay. It wasn't that -- it  
22 wasn't that they were physically -- well, I  
23 don't want to downplay that.

24 It wasn't that there was damage  
25 where you physically couldn't get in. It was

1 more the risk of being right next to the PRDs  
2 and there being --

3 A. It's a combination of both and  
4 other factors.

5 Q. Okay. Understood.

6 Exterior measurements with the  
7 devices we just discussed, they're considered  
8 acceptable ways of getting temperature  
9 readings for the contents of a tank car.

10 Aren't they?

11 MR. LEVINE: Objection.

12 THE WITNESS: Only on  
13 non-jacketed cars.

14 QUESTIONS BY MR. GOMEZ:

15 Q. And that's because if you're  
16 taking an exterior measurement of a jacketed  
17 car, you're pointing and shooting or using a  
18 thermal imagery on some significant layers of  
19 insulation that prevent you from getting to  
20 the shell of the car.

21 Right?

22 A. Yes, that outer jacket metal,  
23 the thermal blanket, any insulation are  
24 all -- and the tank wall itself are all  
25 insulators that prevent getting accuracy of

1 the product in the car.

2 Q. But if you could point and  
3 shoot or take a thermal image of the shell of  
4 the car itself, that would be an accurate  
5 measurement of the product temperature  
6 inside.

7 Would it not?

8 A. It would be reasonably close,  
9 but not -- no, I'd still say no. And  
10 actually, it might be reasonably close, but  
11 again, that's a non-jacketed tank in a tank  
12 shell, not an outer jacket.

13 Q. What is -- when you say  
14 "reasonably close," is there a margin of  
15 error that you can ascribe to that?

16 A. Well, again, the phenomenon of  
17 polymerizables, if there is a polymerizable  
18 reaction going on, my training, the people  
19 have taught me, is that oftentimes they can  
20 react from the outside in.

21 So you can have -- and we've  
22 cleaned storage tanks in chemical plants.  
23 And some of our challenges is, it can be  
24 liquid, gooey, partially reacted material in  
25 the middle, and it's already solidified,

1 reacted material around the outer perimeter,  
2 around the edges.

3 So reactions can happen from  
4 the outside in, and then as they react,  
5 that's building another insulation layer  
6 against external thermometer capabilities.

7 Q. So in essence, because you're  
8 concerned that polymerization is occurring  
9 within the car, that, in and of itself, casts  
10 doubt on whether the readings that you're  
11 getting are accurate.

12 Right?

13 A. That's one of the variables,  
14 yes.

15 Q. Is that a reason for taking  
16 measurements from multiple spots on the tank  
17 car shell, if it's accessible?

18 A. If it's accessible, we would  
19 absolutely want to do multiple spots around  
20 the car.

21 Q. And that's, in fact, what  
22 Mr. Tokarski and your team did.

23 Right?

24 A. We attempted it, yes.

25 Q. They took multiple measurements

1 where there were holes or damage in the  
2 jackets so that they could get readings from  
3 the shell of the car itself.

4 Correct?

5 A. They tried.

6 Q. And that's, in fact, what they  
7 did.

8 Right?

9 A. No, they tried.

10 Q. So if Mr. Tokarski told the  
11 NTSB that in the course of taking these  
12 measurements he's sure he got the shell,  
13 would you have any reason to disagree with  
14 that?

15 A. I would, because he told me  
16 something different.

17 Q. Okay. How did he tell you  
18 that?

19 A. He said, Drew, I don't think we  
20 got to the tank shell. He said, the best  
21 hole I had was about a golf-ball-sized hole,  
22 and I can't guarantee I got to the tank  
23 shell, and I don't think I did,  
24 quote/unquote.

25 Q. When would he have -- when was

1 it that he told you that?

2 A. That was after the very first  
3 entry, the very first entry on those cars to  
4 the east. Because I'm the one that did the  
5 car on the west. The one -- the western car  
6 that started triggering this, well, okay, we  
7 got readings here, let's see if we can get  
8 readings on the other ones. So that's kind  
9 of how that unfolded.

10 Q. Sorry, I thought you had  
11 more --

12 A. No, it's --

13 Q. -- to your -- to your answer.

14 Okay. So that's what  
15 Mr. Tokarski told you.

16 So if Mr. Tokarski told the  
17 NTSB in his statement that he definitely got  
18 the shell, that's inconsistent with your  
19 recollection of your discussions with  
20 Mr. Tokarski.

21 Fair?

22 A. It is. It's inconsistent.

23 Q. Again, focusing on the readings  
24 that were done by Mr. Tokarski and your  
25 other -- and your other personnel, at any

1 point in time, did you communicate to Oxy  
2 that the temperature readings you -- you,  
3 SPSI, were getting were unreliable?

4 A. I don't recall.

5 Q. With respect to the temperature  
6 readings that you, SPSI, and personnel were  
7 getting, did you ever communicate to Norfolk  
8 Southern that you were concerned they were  
9 unreliable?

10 A. Yes.

11 Q. Who specifically did you, SPSI,  
12 communicate that to?

13 A. Norfolk Southern HAZMAT staff.  
14 The first communication was with Jon Simpson.  
15 I don't -- I'm -- okay. I don't want to get  
16 my sequence wrong.

17 One was Robert Wood, and one  
18 was Jon Simpson. I don't remember the  
19 sequence of which I told first. But after  
20 the first entry crew, I explained to Norfolk  
21 Southern's HAZMAT staff that there was no  
22 good places to get to these cars, there was  
23 no reliability of any of these data, and this  
24 is kind of a fruitless effort, putting our  
25 people at risk for data that's not going to

1 mean anything.

2 And they took that, they ran  
3 with it, and I thought that was going to be  
4 the end of it.

5 And then an hour or so later,  
6 they asked us to keep doing it. Whether it  
7 was 30 minutes or 60 minutes, whatever it is,  
8 said, hey we need another round of readings.

9 And I challenged it. I did a  
10 good faith challenge. I said, why are we  
11 doing this. These data are not accurate.  
12 They're meaningless.

13 And I was told the day -- and  
14 that's -- this is my assumption, that it was  
15 the command staff. They want some data;  
16 we're going to get them some data,  
17 quote/unquote.

18 So I don't know if "they"  
19 was -- I thought it was the command staff.  
20 That's my best thought, is the command staff  
21 is pushing for data.

22 Q. These exchanges that you're  
23 referencing where you made the good faith  
24 challenge and indicated that you thought the  
25 temperatures were unreliable, were they all



1 done verbally?

2 A. Yes.

3 Q. Were there -- between -- let's  
4 say between February 3rd and February 6th,  
5 are there any written e-mails, text messages,  
6 other communications that you can recall  
7 seeing where you said or anyone else from  
8 SPSI said, these measurements we're getting  
9 from the tank cars are unreliable?

10 A. No. That was two verbal  
11 conversations with their management.

12 Q. It's my understanding, correct  
13 me if I'm wrong, that generally the way  
14 communication worked within the incident  
15 command structure was SPSI and SRS would  
16 communicate with Norfolk Southern. Norfolk  
17 Southern would then communicate with incident  
18 command.

19 Right?

20 A. That's correct.

21 Q. And information would flow the  
22 other way, from incident command to Norfolk  
23 Southern to SPSI, SRS.

24 Fair?

25 A. Not always. I mean, Norfolk

1 Southern wouldn't tell us everything. I  
2 mean, if they didn't feel it was within our  
3 purview, they may or may not have told us  
4 everything.

5 Q. Yeah. Bad question.

6 To the extent information  
7 needed to flow or the desire was it would  
8 flow from incident command to ultimately you  
9 and your team --

10 A. Yeah.

11 Q. -- it would go through Norfolk  
12 Southern.

13 Fair?

14 A. That's correct.

15 Q. Do you know if at any point in  
16 time between February 4th and February 6th  
17 anybody from Norfolk Southern communicated to  
18 incident command that you believed the  
19 temperature readings you were getting from  
20 the VCM cars were inaccurate or unreliable?

21 A. I do not know.

22 Q. From the date of the vent and  
23 burn to today, have you ever discussed with  
24 anyone at Norfolk Southern, lawyers aside,  
25 whether or not they communicated your

1 concerns about the reliability of the  
2 temperature readings to incident command?

3 A. No, I have not.

4 Q. Why not?

5 A. I was particularly told, as  
6 soon as I was subpoenaed by the NTSB, that  
7 I'm not allowed to talk to anybody, so I  
8 didn't.

9 (McCarty Exhibit 10 marked for  
10 identification.)

11 QUESTIONS BY MR. GOMEZ:

12 Q. Let's bring up Document 161,  
13 which we will mark as Exhibit 10.

14 Mr. McCarty, Exhibit 10 is a  
15 text message exchange that was produced at  
16 Bates numbers SPSI TEXTS 000340 to 000341,  
17 and appears to be from February 6, 2023,  
18 between yourself and Greg Palmer.

19 Do you see that?

20 A. Yes.

21 Q. Who is Greg Palmer?

22 A. He's a retired CN -- retired  
23 Canadian National HAZMAT manager, and I had  
24 worked with Greg years ago. He worked for me  
25 at a former employer years and years ago.

1 He's a part-time resource for SPSI.

2 Q. Okay. So to the extent that  
3 Greg Palmer had any involvement in the  
4 derailment response in East Palestine, was  
5 that under the umbrella of SPSI?

6 A. Yes. He was my night shift  
7 safety officer.

8 Q. Understood.

9 Looking at the dates and the  
10 times here, I just want to direct your  
11 attention to the very top of the second page.  
12 It says, "Messages in chronological order.  
13 Times are shown in GMT plus 00:00.

14 Do you know what that means?

15 A. We reviewed this yesterday.  
16 Greenwich Mean, I think.

17 Q. And can we agree that it's  
18 reflecting the time in a time -- in a time  
19 zone other than east -- the time zone  
20 applicable to East Palestine, Ohio?

21 A. Okay. Yes.

22 Q. Right?

23 And I'll represent to you that  
24 GMT is five hours ahead of the time in East  
25 Palestine, at least at the time these texts

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1 would have been sent.

2 Okay?

3 A. Okay.

4 Q. So where we're referring to the  
5 dates and the times, we actually have to  
6 adjust them backwards five hours.

7 So if I'm going to make those  
8 kind of comments, I just want to orient you  
9 to where -- where I'm coming from.

10 Okay?

11 A. Uh-huh.

12 Q. Direct your attention to  
13 Mr. Palmer's text from 2/6/2023 at what it  
14 says is 4:13 a.m.

15 Do you see that?

16 A. Yes.

17 Q. If we adjust it for time, that  
18 would have actually been five hours earlier,  
19 February 5, 2023, at 11:13 p.m.

20 Make sense?

21 A. Okay. Yes.

22 Q. Mr. Palmer says, "All four cars  
23 are at 65 degrees F. He was able to find  
24 jacket tears."

25 Do you see that?

1           A.       I do.

2           Q.       65 degrees F, the F is a  
3 reference to Farenheit.

4                   Right?

5           A.       Yes.

6           Q.       And Mr. Palmer's reference to  
7 jacket tears is a reference to the ability to  
8 use those point-and-shoot thermometers or  
9 those thermal imagers to get through the  
10 insulated jacket onto the shell of the car  
11 itself.

12                   Right?

13           A.       This is what Greg believed from  
14 the report from the guys.

15           Q.       And at least according to this  
16 text message, Mr. Palmer does not express any  
17 concerns about the reliability of that  
18 65-degree Fahrenheit measurement in the four  
19 cars he's referencing.

20                   Right?

21           A.       He did not communicate anything  
22 more than that.

23                   (McCarty Exhibit 11 marked for  
24 identification.)

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. Okay. We can put that one  
3 aside, sir.

4 Let's pull up Document  
5 Number 170, which we'll mark as Exhibit 11.

6 Mr. McCarty, this document,  
7 Exhibit 11, it appears to be a February 5,  
8 2023, afternoon entry findings document that  
9 was produced at Bates number SPSI 001747 to  
10 001748.

11 Do you see that?

12 A. Yes.

13 Q. This document, an entry  
14 findings document, is that something that is  
15 typically created by SPSI in the course of  
16 responding to a derailment?

17 A. These were notes that I guess  
18 one of our employees jotted down from his  
19 entry operations.

20 Q. One of your employees who was  
21 on the site as an employee -- well, as part  
22 of SPSI's efforts to respond to the  
23 derailment.

24 Right?

25 A. Yes.

1 Q. Do you know which employee?

2 A. I'd have to go back and ask --  
3 I'm not sure on this memory. I don't  
4 remember who put this together. I don't.

5 Q. And would this doc -- do you  
6 know whether this document would have been  
7 created contemporaneously with the entry  
8 that's being documented?

9 A. I'm sorry, what's the word  
10 "contemporaneously"?

11 Q. Fair enough.

12 At or around the same time as  
13 the entry that's being documented.

14 A. It was probably typed up  
15 afterwards.

16 Q. So whoever this employee is for  
17 SPSI goes into the site, they do their work,  
18 they come out of the site, and then they type  
19 up their notes in a document like the one  
20 that we see here as Exhibit 11.

21 Fair?

22 A. Not necessarily. Not  
23 immediately. I mean, this was probably on  
24 scratch paper or something and then prettied  
25 up later.



1           Q.       So taken from like handwritten  
2 notes and then made -- and then typed up into  
3 one of these types of documents.

4                   Fair?

5           A.       Yeah.

6           Q.       Yeah.

7                   Okay. And that would have been  
8 done as part of SPSI personnel's employment  
9 with SPSI.

10                   Right? It's not done for  
11 personal purposes?

12           A.       Correct. This would be an SPSI  
13 question.

14           Q.       And this is the type of record  
15 that SPSI would then maintain to document  
16 what was found at different entries on the  
17 site.

18                   Fair?

19           A.       Fair.

20           Q.       Let's move through some of  
21 the -- some of the notes that are referenced  
22 here.

23                   You see where it says, "vinyl  
24 chloride cars listed from east to west?" Top  
25 of the page?

1 A. Yes.

2 Q. Okay. It then lays out the  
3 different cars that we've discussed in the  
4 same order that we discussed them.

5 Fair?

6 A. Yes.

7 Q. The first car is TILX402025,  
8 "eastern-most VC car."

9 Right?

10 A. Eastern-most -- yeah,  
11 eastern-most. Yes, I'm with you.

12 Q. And it notes that there was a  
13 60 PSI pressure gauge reading at 12:30?

14 A. Yes.

15 Q. 60 PSIG is a normal pressure  
16 reading for a VCM car.

17 Right?

18 A. Yes.

19 Q. And using the pressure curves  
20 that we discussed before, that would also  
21 correspond to a normal temperature from the  
22 VCM cars.

23 Right?

24 A. Yes.

25 Q. With respect to this section,

1 for TILX402025, there is nothing to indicate  
2 that the pressure reading was unreliable.

3 Right?

4 A. On the TILX car, that's  
5 correct.

6 Q. And there -- again, just  
7 referencing this section of the document that  
8 we're discussing, there's nothing in this  
9 section to suggest that the pressure reading  
10 for this particular car was inaccurate.

11 Correct?

12 A. That is correct.

13 Q. Let's move on to the next car.  
14 OCPX080235, heat-impacted car that has not  
15 burned/relieved.

16 Do you see that?

17 A. Yes.

18 Q. This section goes on to note  
19 that there's a temperature reading of  
20 67 degrees on the pressure plate.

21 Correct?

22 A. Well, that's what it says here,  
23 but I'm wondering how our people did that  
24 when they were -- this is the first I've seen  
25 this data, to be honest with you. I don't --

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1 they shouldn't have been anywhere near that  
2 pressure plate, but I'm following the  
3 information here.

4 Q. Okay. Putting aside the safety  
5 concerns and whether they should or should  
6 not have been there, you don't have any  
7 reason to disagree with this being an  
8 accurate representation of what they did.

9 Right?

10 A. Again, I'd have to investigate  
11 and verify who collected this data, you know,  
12 did they confuse scratch papers when they  
13 were asked to put this together for whoever  
14 subpoenaed this information.

15 That's why I got to be careful  
16 in how I answer this, because I'm just now  
17 seeing this here, and I don't -- I don't  
18 necessarily -- I can't confirm this. I  
19 can't.

20 Q. Okay. You're testifying as the  
21 corporate designee for SPSI.

22 Right?

23 A. I am.

24 Q. This was a document produced by  
25 SPSI.

1 Right?

2 A. Apparently so, yes.

3 Q. Are you not prepared to testify  
4 to the accuracy of the information in this  
5 document as SPSI's corporate representative?

6 A. I'm a little surprised by -- I  
7 don't know who prepared this. So at this  
8 moment -- is that a follow-up thing, or how  
9 does this work? I don't know what I don't  
10 know in the process here, but...

11 MR. HANSON: This was produced  
12 by SPSI, and in -- it was responsive  
13 to the subpoena, to the 30(b)(6)  
14 subpoena.

15 I don't believe as SPSI he has  
16 to have complete and total recall of  
17 every piece of paper that has been  
18 produced.

19 We'll certainly, if you'd like,  
20 follow up this evening and try to  
21 figure out what we can find out about  
22 this, since there's a second day, and  
23 try to do -- and try to give better  
24 answers, if you would like.

25 MR. GOMEZ: I just want to know

1           if this is a document that he can or  
2           can't testify to at this point as a  
3           corporate representative.

4                   MR. HANSON: Well, I think  
5           he --

6                   MR. GOMEZ: I believe the  
7           answer is -- I believe the answer is  
8           on the record.

9                   MR. HANSON: Yeah.

10                   MR. GOMEZ: And I'm fine to  
11           move on.

12                   MR. HANSON: Okay.

13   QUESTIONS BY MR. GOMEZ:

14           Q.       You can't today, right?

15           A.       Yeah, I mean --

16           Q.       All right.

17           A.       -- I think, yeah, that'd be --  
18   let's move on.

19           Q.       All right. Putting that --  
20   putting that aside, you can -- you can  
21   confirm that at least it says on this -- on  
22   this piece of paper, the document we've  
23   marked as Exhibit 11, that the temperature  
24   reading was 67 degrees Fahrenheit on the  
25   pressure plate.

1 Right?

2 A. That's what someone's reported.

3 Q. A temperature reading on a  
4 pressure plate, that's a good reading.

5 Right?

6 A. It's not representative of the  
7 temperature in the product, but it is one  
8 thing in reference documents that can be an  
9 indicator of increased temperature in the  
10 car.

11 Q. Okay. So I want to make sure I  
12 understand correctly.

13 It's not a -- it's not a --  
14 it's not representative of the product  
15 temperature, but it could be an indicator of  
16 what the product temperature is.

17 Is that what you're saying?

18 A. So the pressure plate itself is  
19 over an inch thick of metal.

20 Q. Uh-huh.

21 A. So your external ambient --  
22 whatever reading you're getting outside in  
23 ambient air is not going to be representative  
24 of the liquid in the car.

25 But we have, in our emergency

1 response, been able to use point-and-shoot  
2 thermometers on pressure -- because heat  
3 rises. So if the pressure plate gets warm,  
4 it can be an indicator.

5 Q. And again, focusing just on  
6 this section, the section for OCPX080235,  
7 there's nothing written in this section that  
8 you see in the document calling into question  
9 the accuracy or the reliability of that  
10 67-degree Fahrenheit reading.

11 Correct?

12 A. What was your -- I'm sorry,  
13 your question? I was still thinking about --  
14 what was the question?

15 Q. Referencing just this section  
16 that we've been talking about for OCPX080235,  
17 there's nothing written in this document, in  
18 that section, that calls into question the  
19 reliability or the accuracy of that  
20 temperature reading.

21 Correct?

22 A. Not written here, no.

23 Q. Let's move on to the next one.

24 OCPX080179, car that had  
25 aggressively relieved.



1 Do you see that?

2 A. Yes.

3 Q. That's the car that vented for  
4 70 minutes February -- afternoon of  
5 February 4th.

6 Right?

7 A. Yes.

8 Q. And that would have been the  
9 car that escalated the concern about  
10 polymerization actively happening within the  
11 VCM cars.

12 Correct?

13 A. Yes.

14 Q. The document states that for  
15 that car, OCPX080179, the temp reading was  
16 85 degrees Fahrenheit, taken approximately  
17 knee-high from ballast level.

18 Did I read that correctly?

19 A. Yes.

20 Q. Knee-high from ballast level  
21 would approximately be 1 to 2 feet above the  
22 surface level?

23 Is that fair?

24 A. Yes.

25 Q. And that would be the liquid

1 phase for a car.

2 Right?

3 A. Well, that would be the outer  
4 jacket material.

5 Q. Well, there's nothing that says  
6 that the reading was through the jacket or  
7 through a hole in the jacket.

8 Right?

9 A. Well, again, the -- none of my  
10 employees I interviewed, and I interviewed  
11 them all who would have had a hand in thermal  
12 monitoring, all of my employees -- and as --  
13 again, the NTSB subpoena, I had to  
14 investigate, okay, tell me about these  
15 readings, and make sure I knew what I thought  
16 all my guys reported to me.

17 And they all confirmed.  
18 Literally none of my employees felt that they  
19 got good, accurate readings of the tank shell  
20 in any of the efforts.

21 Q. This document does not say  
22 that, though, for this particular car.

23 Correct?

24 A. This -- any references -- I'm  
25 just still hung up on somebody in my company

1 climbed on that housing, and I don't know  
2 why.

3 But the -- these things there  
4 were from point-and-shoot thermometers on the  
5 external of the jacket.

6 Q. But again -- and I want to make  
7 sure we're clear about this.

8 In this document that we're  
9 looking at, Exhibit 11, the section for  
10 OCPX080179, there is no reference to the  
11 temperature readings that were taken being  
12 unreliable or inaccurate.

13 Correct?

14 A. No. In all the recordings,  
15 they were documented because we were asked to  
16 document them.

17 Q. 85 degrees Fahrenheit, that  
18 would correspond to roughly the normal  
19 loading pressure for a VCM car at 60 to  
20 70 PSI.

21 Isn't that right?

22 A. Can I look back at the pressure  
23 curve?

24 Q. Sure. It's page 49, I believe.

25 A. And I'm sorry, what was exactly

1 your question?

2 Q. Sure.

3 At 85 degrees Fahrenheit, we're  
4 looking at a corresponding pressure of  
5 roughly 70 PSI.

6 Is that fair?

7 A. Yes.

8 Q. Okay. And that is, in fact,  
9 roughly the normal loading pressure for a  
10 VCM-containing railcar.

11 Isn't that correct? A tank  
12 car?

13 A. Yes.

14 Q. 85 degrees Fahrenheit is also  
15 about 100 degrees less than the temperature  
16 required to activate the PRD, according to  
17 the pressure curve.

18 Right?

19 A. 100 -- what was your question?  
20 100 what?

21 Q. Sure.

22 85 degrees --

23 A. Pressure or degrees?

24 Q. The reading that we're looking  
25 at here for this particular car, 85 degrees,

1 according to the pressure curve, is roughly  
2 100 degrees less than the temperature  
3 required to activate the PRD?

4 A. Yes, if the 85 degrees was  
5 representative of the temperature in the car,  
6 but it wasn't.

7 Q. Well, the document doesn't say  
8 that.

9 Right?

10 A. It does not say that.

11 Q. Let's move to the next car,  
12 GATX095098.

13 Do you see that?

14 A. 095098.

15 Q. The document for -- or in this  
16 section, the document says, "Temp reading  
17 60 degrees Fahrenheit taken via three  
18 different tears in jacket."

19 Did I read that correctly?

20 A. Yes.

21 Q. Three different tears in the  
22 jacket means that 60 degrees was the reading  
23 at the shell for this particular tank car at  
24 those three spots.

25 Correct?

1           A.       No.

2                   MR. HANSON:   Objection.

3   QUESTIONS BY MR. GOMEZ:

4           Q.       Why not?

5           A.       Because every one of my  
6   employees doing these readings reported to me  
7   that they never felt confident they ever  
8   touched the jack -- the tank shell itself.

9           Q.       But the document doesn't say  
10   that.

11                   Right?

12          A.       The document does not say that.

13          Q.       Okay.   And you don't even know  
14   who wrote this document?

15          A.       I need to verify who put this  
16   together.   I don't know which one of my  
17   employees put this together.

18          Q.       So as you sit here right now,  
19   you can't compare what the employee who wrote  
20   this document, whoever that is, put in this  
21   document versus what they told you verbally.

22                   Fair?

23          A.       Fair.

24          Q.       Let's move on to the next car.  
25   OCPX80370.

1 Do you see that?

2 A. 80370, yes.

3 Q. And there's three bullet points  
4 referencing temperature. They are bullet  
5 points 2 through -- 2 through 4.

6 The first says, "Temp reading  
7 135 degrees Fahrenheit at 14:30 on 2/5/23."

8 Right?

9 A. I think I lost you. Where are  
10 you at?

11 Q. Second bullet point.

12 A. Second bullet point. Okay.

13 Q. It says, "Temp reading  
14 135 degrees Fahrenheit at 14:30 on 2/5/23."

15 A. Yes.

16 Q. Right?

17 Then the next reading recorded  
18 for that car was 138 degrees at 15:30,  
19 2/5/23.

20 Right?

21 A. Yes.

22 Q. That would have been about an  
23 hour later?

24 A. Appears to be, yes.

25 Q. And then the final temperature

1 noted in this section of the document is a  
2 temp reading of 135 degrees Fahrenheit at  
3 16:30 on 2/5/2023.

4 Is that right?

5 A. Yes.

6 Q. That same bullet point goes on  
7 to note that there were two other holes in  
8 the jacket where the temp measured  
9 100 degrees Fahrenheit.

10 Do you see that?

11 A. I see that.

12 Q. There is nothing in this  
13 document, specifically this section for  
14 OCPX80370, calling into question the accuracy  
15 or the reliability of these readings.

16 Right?

17 A. No, there's not.

18 Q. The reference to two other  
19 holes in the jacket reading a temperature of  
20 100 degrees Fahrenheit, was that information  
21 that was shared with you in the field?

22 A. No, it was not.

23 Q. The reference to two other  
24 readings through tears in the jacket at  
25 100 degrees Fahrenheit, do you know whether



1 that was ever communicated to Norfolk  
2 Southern?

3 A. No, I do not.

4 Q. The reference to two holes in  
5 the jacket with a corresponding temperature  
6 of 100 degrees Fahrenheit, do you know  
7 whether that was ever communicated to  
8 incident command?

9 A. No, I do not.

10 (McCarty Exhibit 12 marked for  
11 identification.)

12 QUESTIONS BY MR. GOMEZ:

13 Q. We can put that aside, sir.

14 Let's bring up Document  
15 Number 172, which we will mark as Exhibit 12.

16 Mr. McCarty, Exhibit 12 is an  
17 e-mail exchange between you and Michael  
18 Kline.

19 Do you see that?

20 A. Yes.

21 Q. And it was produced as Bates  
22 number SPSI 008099, bottom right-hand corner.  
23 Right?

24 A. Yes.

25 Q. The subject of the e-mail is VC

1 car temp data information.

2 Correct?

3 A. Yes.

4 Q. And Mr. Kline is writing to  
5 you -- well, let me take a step back.

6 Who is Michael Kline?

7 A. He was a project manager then.  
8 He's assistant general manager today.

9 Q. So at the time of the  
10 derailment, he was a project manager?

11 A. Yes.

12 Q. Okay. And he writes to you in  
13 this e-mail from March 30, 2023, in the  
14 second paragraph, "All temperature data was  
15 taken using a point-and-shoot-style  
16 thermometer. The readings were taken from  
17 the tank shell through openings in the  
18 jacket. Due to ongoing safety concerns, SPSI  
19 did not remove any sections of jacket, so the  
20 readings were taken at the lowest available  
21 points in the car where the jackets had been  
22 damaged during the derailment."

23 Did I read that correctly?

24 A. Yes.

25 Q. So Mr. Kline is telling you

1     that in the course of taking these  
2     temperatures, SPSI personnel didn't actively  
3     remove any jackets.

4                     Right?

5             A.       Correct.

6             Q.       But instead were taking  
7     readings at the lowest available points where  
8     the jackets had been compromised and they  
9     could get through to the tank shells.

10                    Right?

11                   MR. HANSON: Objection.

12                   THE WITNESS: That's the  
13     context that's not talked about here.

14     QUESTIONS BY MR. GOMEZ:

15             Q.       Okay. There's no context  
16     provided in this document.

17                    Right?

18             A.       There is not.

19             Q.       And there's also no commentary  
20     about whether the temperatures were reliable.

21                    Right?

22             A.       No, there's not.

23             Q.       There's nothing that Michael  
24     Kline says in this e-mail about these  
25     readings being inaccurate.

1 Right?

2 A. No, there's not.

3 Q. There's nothing in this e-mail  
4 about reports from the personnel who took  
5 these temperature data reporting that they  
6 didn't get to the jacket -- or to the tank  
7 shell.

8 Right?

9 A. You're correct.

10 Q. Okay. He goes on to finish the  
11 e-mail, "If you need anything else clarified,  
12 let me know."

13 Do you know if you responded to  
14 this e-mail?

15 A. I called him.

16 Q. You called him?

17 A. Yes.

18 Q. And what did you talk about?

19 A. Re-interviewed like -- just to  
20 verify. I mean, everything that our guys  
21 were telling me, they didn't feel good that  
22 anything with these data were accurate  
23 because they could not guarantee that they  
24 were getting to the jacket -- or to the tank.  
25 They were only getting to little

1 golf-ball-sized holes or very small crevices  
2 of cracks in jackets. That's the context  
3 that's missing in all this.

4 Q. And did Mr. Kline go back to  
5 the employees who took these temperature  
6 readings based off that phone call?

7 A. Well, he was one of them.

8 Q. He was one of them?

9 A. Yeah.

10 Q. So Mr. Kline, who is writing  
11 this e-mail, actually physically took some of  
12 the temperature readings.

13 Right?

14 A. It's my understanding.

15 Q. And if Mr. Kline wanted to put  
16 in this e-mail that he felt these temperature  
17 readings that he took were inaccurate or  
18 unreliable, he could have done that, right?

19 MR. HANSON: Objection.

20 MR. LEVINE: Objection.

21 THE WITNESS: Yeah, I can't  
22 speak to whether he -- I can't speak  
23 to that.

24 QUESTIONS BY MR. GOMEZ:

25 Q. Okay. That's important

1 context.

2 Right?

3 A. It was already communicated.

4 Q. So you're saying Mr. Kline  
5 didn't have to communicate that to you?

6 A. It had already been  
7 communicated in the -- in the first one and  
8 the second entry teams. The second entry  
9 team also communicated the same thing  
10 Mr. Tokarski communicated after the first  
11 entry team. That's why we communicated to  
12 Norfolk Southern twice about it.

13 Q. So communicated verbally, but  
14 never communicated in writing?

15 A. No.

16 (McCarty Exhibit 13 marked for  
17 identification.)

18 QUESTIONS BY MR. GOMEZ:

19 Q. Let's pull up Document  
20 Number 138, which we'll mark as Exhibit 13.

21 Mr. McCarty, this Exhibit 13 is  
22 the Group G, Exhibit 31 to the NTSB  
23 investigative hearings.

24 Right?

25 A. Yes.

1 Q. And it's the interview  
2 transcript from the interview you gave on  
3 February 23, 2023.

4 Right?

5 A. Yes.

6 Q. Have you reviewed this document  
7 before today?

8 A. Yes, I reviewed it in the --  
9 before the NTSB hearings in June.

10 Q. And February 23, 2023, that  
11 would have been roughly 20 days after  
12 derailment.

13 Right?

14 A. Yes.

15 Q. Fair to say that everything  
16 that happened in the 20 days preceding this  
17 interview was still pretty fresh in your  
18 mind?

19 A. Relatively speaking.

20 Q. It's a significant derailment.  
21 Right?

22 A. Significant derailment.

23 Q. Significant response.

24 Right?

25 A. Significant response.

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1 Q. Memorable.

2 Right?

3 A. Memorable.

4 Q. Okay. And you knew that you  
5 were giving this interview to the NTSB  
6 because it's their job to determine how  
7 derailments occur so that they can prevent  
8 them from happening in the future.

9 Fair?

10 A. Yes, that's their -- that's  
11 their primary function.

12 Q. So you knew that it was  
13 important to be truthful when you gave this  
14 statement to the NTSB.

15 Right?

16 A. Yes.

17 Q. You knew that it was important  
18 for you to be accurate in the information you  
19 were giving the NTSB.

20 Right?

21 A. Yes.

22 Q. And you knew that it was  
23 important to be complete in the information  
24 you were giving the NTSB.

25 Right?



1           A.       I mean, when you say  
2    "complete," we're all human beings. If I  
3    missed something, it wouldn't have been a  
4    deliberate miss. I mean, I -- you know,  
5    so --

6           Q.       So you didn't deliberately  
7    leave out any important information.

8                    We can agree on that, right?

9           A.       Yes. Correct.

10          Q.       And if additional information  
11    came to mind after you gave this interview,  
12    you had the opportunity to share that with  
13    the NTSB as well.

14                    Right?

15          A.       I would have done that in the  
16    hearings, yes.

17          Q.       And you also had the ability to  
18    actually review this transcript for any  
19    errors or anything that you omitted.

20                    Right?

21          A.       Yes, through that errata  
22    program, yeah.

23          Q.       Having reviewed this document  
24    before, can you point me to anywhere where  
25    you indicate that there were concerns about

1 the reliability or the accuracy of the  
2 temperature readings that were being taken  
3 between February 4th and February 6th?

4 MR. HANSON: Do you -- you  
5 better read the whole thing.

6 THE WITNESS: Yeah, I was going  
7 to say --

8 MR. GOMEZ: We can go off the  
9 record, and you can read the whole  
10 thing.

11 MR. HANSON: Okay. Let's do  
12 that.

13 THE WITNESS: I was going to  
14 say, I don't know if they even asked  
15 me about that.

16 MR. HANSON: No, read the whole  
17 thing. Read the whole thing. That's  
18 what he wants to know.

19 THE WITNESS: Can I take a  
20 five-minute break real quick?

21 MR. GOMEZ: You can take all  
22 the break you want.

23 THE WITNESS: Okay.

24 VIDEOGRAPHER: Off the record  
25 at 1:53.

1 (Off the record at 1:53 p.m.)

2 VIDEOGRAPHER: We are now back  
3 on the record at 2:12.

4 QUESTIONS BY MR. GOMEZ:

5 Q. So, Mr. McCarty, we just took a  
6 quick break.

7 Two housekeeping notes. The  
8 first is, we marked an annotated copy of  
9 Exhibit 13 before we took the break. We've  
10 now swapped that out for a clean copy, which  
11 is what you have in front of you and which  
12 will be part of the record. That's number 1.

13 A. Okay.

14 Q. Number 2, the question that I  
15 had asked before the break, I'm going to  
16 withdraw that question and instead ask you  
17 some different questions about Exhibit 13.

18 Okay?

19 A. Okay.

20 Q. With respect to Exhibit 13, you  
21 mentioned that you were familiar with and I  
22 think went through the errata process.

23 Is that correct?

24 A. Yes.

25 Q. And in that process, you had an

1 opportunity to review the transcript to make  
2 sure that it was correct and accurate.

3 Right?

4 A. Yes.

5 Q. You had the opportunity to  
6 provide clarifications if there was issues  
7 that needed to be clarified.

8 Right?

9 A. Yes.

10 Q. You had an opportunity to  
11 correct misstatements that were noted in the  
12 transcript if there were misstatements.

13 A. Yes.

14 Q. Correct?

15 So can we agree that  
16 Exhibit 13, with your changes in the errata  
17 process, is a true and accurate reflection of  
18 the statements you made to the NTSB in  
19 connection with that February 23, 2023  
20 interview?

21 A. Yes.

22 Q. So if it appears in that  
23 transcript, again, Exhibit 13, it was  
24 something you told the NTSB during that  
25 statement.

1 Correct?

2 A. Yes.

3 Q. And if it doesn't appear in  
4 that transcript from February 23, 2023, then  
5 it's not a statement that you made to the  
6 NTSB during that interview.

7 Correct?

8 A. Yeah, if it's not in here, it  
9 wasn't recorded, right.

10 Q. It's not that it wasn't  
11 recorded; it's that it wasn't said.

12 Right?

13 A. Oh, yeah, correct. Not part of  
14 that process.

15 (McCarty Exhibit 14 marked for  
16 identification.)

17 QUESTIONS BY MR. GOMEZ:

18 Q. We can put that one aside.

19 Let's bring up Document  
20 Number 175, which we'll mark as Exhibit 14.

21 Mr. McCarty, the document that  
22 we're marking as Exhibit 14, I just want to  
23 orient you on how the best way to transition  
24 through the pages.

25 Unfortunately, the resolution

1 is such that some of the page numbers are cut  
2 off in the bottom right-hand corner.

3 A. Okay.

4 Q. But the screen has the full  
5 numbers on the bottom right-hand corner.

6 So that's how we'll be  
7 referencing the document and allow you to  
8 orient yourself.

9 Okay?

10 A. Oh, okay. Got it.

11 Q. Does that make sense?

12 A. Yes.

13 Q. Very good.

14 Mr. McCarty, Exhibit 14 is a  
15 presentation that you made to the Senate  
16 Commerce Committee on March 27, 2023.

17 Right?

18 A. Yes.

19 Q. And is this, in fact, the  
20 presentation that we were discussing earlier  
21 in connection with some text messages between  
22 you and Chip Day?

23 A. Yes.

24 Q. And this was the presentation  
25 to -- I think we called it the subcommittee.

1 It wasn't the full Senate but a certain  
2 number of senators and staffers and the like?

3 A. Yes.

4 Q. And the purpose of this  
5 presentation was in part to provide  
6 information about your response to the East  
7 Palestine derailment.

8 A. Yeah.

9 And I'm sorry. Can I clarify  
10 my previous answer?

11 Q. Of course.

12 A. The senators weren't there.  
13 Just their staffers --

14 Q. Okay.

15 A. -- just for the record. The  
16 senators didn't show up for the meeting; just  
17 their staffers.

18 Q. Okay.

19 A. I just wanted to get that  
20 clear.

21 Okay. What was your next  
22 question? I'm sorry.

23 Q. Sure.

24 Part of the purpose of this  
25 presentation, in part, was to provide

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1 information about your response to the East  
2 Palestine derailment.

3 Right?

4 A. Yes, that's what initiated  
5 their inquiry.

6 Q. If we look at the page that's  
7 marked SPSI 114195 -- and that'll come up on  
8 the screen as well to help orient you.

9 A. Yes.

10 Q. This is the start of the  
11 presentation specific to East Palestine.

12 Fair?

13 A. Yeah, this was probably  
14 two-thirds of the way through the  
15 presentation.

16 Q. Okay. And if we scroll down to  
17 page 114202, there's a part of the  
18 presentation that reflects observations of  
19 conditions Saturday into Sunday.

20 Do you see that?

21 A. 202, yes.

22 Q. And there's a bullet point  
23 towards the middle of the page that reads,  
24 "Close-up assessment of that car revealed,  
25 colon," and then several observations below



1 it.

2 Right?

3 A. Yes.

4 Q. That last observation, the last  
5 bullet point, can you please read that into  
6 the record?

7 A. The very last bullet point on  
8 that page?

9 Q. Yes, please.

10 A. The "west side of that car was  
11 at 135 Fahrenheit, and it increased in  
12 30 minutes to 138 Fahrenheit."

13 Q. That statement that you made in  
14 this presentation, Exhibit 14, about the  
15 temperature of this western-most VCM car to  
16 the United States Senate subcommittee  
17 staffers was based off of temperature  
18 readings that were taken by SPSI personnel on  
19 the site.

20 Correct?

21 A. That particular reference to  
22 those particular readings? You're looking at  
23 the temperature reader. That was me.

24 Q. Oh, you took that particular  
25 reading?

1 A. Yes.

2 Q. Okay.

3 A. Well, I took the 135. I took  
4 the 135. Other employees took the 138  
5 30 minutes later.

6 Q. Okay. So you have firsthand  
7 knowledge of the 135 referenced here.

8 Right?

9 A. Yes.

10 Q. And then other employees took  
11 the 138 that's referenced here.

12 A. Yes.

13 Q. Right?

14 The PowerPoint does not note  
15 that these temperatures were unreliable.

16 Right?

17 A. No. These were the ones of all  
18 five cars involved -- well, the four cars  
19 that would have had heat impingement, this is  
20 the one that there was enough jacket removed.  
21 The jacket space was -- you know, I'm trying  
22 to show here measurements, but probably a  
23 couple of feet by a foot in width.

24 We had one snapshot of one  
25 spacious area where we could truly -- I

1 put -- I told -- I took my glove off my hand,  
2 put the back of my hand on the car. It was  
3 too hot to touch. I had to hold it three  
4 seconds and couldn't hold it much longer than  
5 a few seconds and I would burn my hand  
6 otherwise.

7 So we went another entry, went  
8 and got a thermal imaging camera, took the  
9 temperature, got 135, and then started  
10 checking it every few minutes.

11 Q. So of all the temperature  
12 measurements taken from different points  
13 across all of these cars in a 48-hour period,  
14 the only one that's reliable are the highest  
15 ones that are indicated here as 135 and 138?

16 A. The only car that we had one  
17 spot, and only one spot, on that car that I  
18 knew about, that I personally observed, was  
19 that spot of torn jacket on the western-most  
20 side of the car.

21 Q. And again, as you sit here  
22 today, is there any document that you're  
23 aware of, e-mail, text message, other type of  
24 document, created at or around the time of  
25 the derailment, indicating that the other

1 temperatures taken of the VCM cars were  
2 unreliable or inaccurate?

3 A. Documentation seems to be no.  
4 It was the verbal communications between my  
5 personnel and me, and me to Norfolk Southern  
6 HAZMAT staff.

7 Q. This presentation that you gave  
8 to the Senate subcommittee staffers, do you  
9 independently recall whether this  
10 presentation contained information about  
11 Oxy's conclusion that polymerization was not  
12 occurring in the cars?

13 A. I can't recall. I'd have to go  
14 back and...

15 Q. Without looking at the  
16 document, you couldn't tell whether or not  
17 you told the Senate subcommittee that Oxy  
18 concluded polymerization was not occurring in  
19 the cars?

20 A. I don't recall.

21 Q. We can put that one aside, sir,  
22 and we'll bring up -- actually, bring out  
23 Exhibit Number 1 again. At the bottom of the  
24 stack.

25 A. Oh.

1 Q. And again, Exhibit Number 1 is  
2 the HAZMAT materials group fact -- group  
3 chair's factual report.

4 Right?

5 A. Yes.

6 Q. I'm going to orient you to  
7 page 92 of 158, specifically Table 12 in the  
8 center of the page.

9 And with full understanding  
10 that that table is pretty small in printed  
11 form, it also appears blown up on the screen  
12 in front of you for ease of reference.

13 Okay?

14 A. Yeah. Okay.

15 Q. Mr. McCarty, the information  
16 that we see in Table 12 appears to be  
17 temperature readings and then a graph of  
18 temperature readings taken by SPSI on  
19 February -- between February 5th and  
20 February 6, 2023.

21 Is that correct?

22 A. Yes.

23 Q. And having reviewed this table,  
24 can you confirm that these temperature  
25 readings are in fact the temperature readings

1 that were obtained by SPSI personnel for  
2 these cars during that period?

3 A. I'm going to concede that the  
4 notes that our folks took and provided to  
5 Norfolk Southern ended up in this report.  
6 I'll concede that, yes.

7 Q. Okay. And made their way into  
8 these kind of charts that we're looking at?

9 A. Yes.

10 Q. Okay. Fair enough.

11 These temperature readings for  
12 the first four vinyl chloride cars that we  
13 see in the -- in the chart on the left-hand  
14 side, you'd agree with me that they reflect  
15 fairly stable temperatures.

16 Right?

17 A. No, that's where we're  
18 disagreeing. I'm not saying that these  
19 temperatures -- they're just not accurate of  
20 the liquid in a car. That's the message that  
21 is driven home. I'm on the record in the  
22 NTSB hearings. That's the -- these are not  
23 representative of liquid in that car.

24 Q. Got it.

25 So you're -- so you're not

1 disputing that these are the numbers that  
2 SPSI came up with and reported to the NTSB.  
3 Instead, you're disputing that they're not  
4 accurate measurements of the temperature of  
5 the product in the car?

6 A. That's correct.

7 Q. You mentioned earlier in  
8 connection with a statement that was  
9 attributed to you to the incident commander  
10 about the runaway polymerization temperature  
11 of 153 to 158, that you took exception to  
12 that and stated that to the NTSB.

13 Do you remember that?

14 A. No. In fact, going back to  
15 your question this morning, and that was some  
16 miscommunication, disconnect between the  
17 incident commander's assumption that we were  
18 referring to polymerization.

19 Any conversation about  
20 increasing pressure in the cars and  
21 increasing temperature in the cars had to do  
22 with damage assessment that we never had a  
23 good chance to do. And it took one car with  
24 one critical damage to detonate and land in  
25 the town.

1                   So a little disconnect in  
2     communication.

3                 Q.       Just referencing what appears  
4     in the document itself, in Exhibit 1, the  
5     attribution by the NTSB to comments made  
6     about the runaway polymerization temperature  
7     to the incident command, you disagree with  
8     that.

9                   Right?

10                A.       As I stated this morning, that  
11     was a -- wherever the NTSB got that  
12     statement, it was not from me.

13                Q.       And you told them that it  
14     wasn't from you.

15                   Right?

16                A.       I'm not so sure that they ever  
17     asked me. This is in their June document.  
18     That never came up, as I recall, in my  
19     February interview.

20                Q.       So is it your testimony that  
21     with respect to that conversation that's  
22     attributed to you, you never told the NTSB  
23     that that was inaccurate?

24                A.       If they asked me a question  
25     during the hearings, I would have clarified



1 it. I don't recall if they asked me that  
2 question or not.

3 Q. Outside of the hearings, you  
4 haven't gone to the NTSB with respect to that  
5 particular statement that we're referring to  
6 and said, I didn't -- I didn't say this to  
7 anybody; it's inaccurate?

8 A. As I recall, they never offered  
9 me an errata data sheet opportunity on their  
10 draft report. They didn't give me an  
11 opportunity to clarify what they put in their  
12 report.

13 Q. With respect to what we're  
14 looking at here, Table 12, the temperatures  
15 that were reported and recorded, outside of  
16 the investigative hearings in East Palestine,  
17 have you communicated with the NTSB about  
18 your belief that these are inaccurate or  
19 unreliable as measures of the actual  
20 temperature of the product in the VCM cars?

21 A. I communicated with them very  
22 clearly during the hearings at East  
23 Palestine.

24 Q. Okay. My question was, outside  
25 of those hearings, have you communicated with

1 the NTSB that what appears in this Table 12  
2 on page 92 of Exhibit 1 is an inaccurate,  
3 unreliable measure of the actual temperature  
4 of the product inside the VCM cars?

5 A. Now you're grouping all the  
6 cars into that statement with the way you're  
7 phrasing the question.

8 The car on the west, the  
9 western-most car, whatever car number that  
10 was, by itself, on the west, that certainly  
11 had us concerned on Sunday afternoon or  
12 Sunday morning, whenever it was we found that  
13 it had quit burning. And I don't remember  
14 the timeline.

15 But at sometime Sunday, people  
16 said it quit burning, and we went to assess  
17 it. That's kind of when that elevated  
18 concern happened.

19 Q. So let me rephrase that.

20 Outside of the investigative  
21 hearings in June of 2023 in East Palestine,  
22 have you communicated that the temperatures  
23 that appear in Table 12 of Exhibit 1 for the  
24 four VCM cars to the east are not accurate or  
25 reliable measures of the temperature of the

1 VCM product in the tank cars?

2 A. Any communications I had with  
3 the NTSB were through the errata data sheet  
4 process from the February -- whatever date it  
5 was they interviewed me in the church in East  
6 Palestine and the June hearings in East  
7 Palestine. Those are the only communications  
8 I've had regarding this with the NTSB.

9 MR. GOMEZ: Sir, I've only got  
10 about an hour left across both  
11 notices, so I'm going to reserve the  
12 remainder of my time and invite the  
13 other attorneys to ask you their  
14 questions.

15 THE WITNESS: Okay.

16 MR. GOMEZ: Thank you.

17 THE WITNESS: You're welcome.

18 VIDEOGRAPHER: We are off the  
19 record at 2:27.

20 (Off the record at 2:27 p.m.)

21 VIDEOGRAPHER: We are now back  
22 on the record at 2:31.

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. SWANSON:

25 Q. Mr. McCarty, good afternoon.

1 My name is Brian Swanson, and I represent  
2 Trinity.

3 Before we dive in here, I just  
4 wanted to confirm. On the record this  
5 morning, my understanding, based on comments  
6 from your attorney, is that the testimony  
7 you're providing in response to my questions  
8 is testimony on behalf of Drew McCarty and on  
9 behalf of SPSI.

10 Is that your understanding as  
11 well, sir?

12 A. Yes, sir.

13 Q. Thank you.

14 Okay. So as I said, I  
15 represent Trinity. Trinity is a company you  
16 are familiar with.

17 True?

18 A. Yes, sir.

19 Q. Can you tell me, what's your  
20 understanding of what Trinity does?

21 A. So they build, produce and  
22 lease tank cars.

23 Q. Okay. And setting aside for  
24 purposes of this question the East Palestine  
25 derailment, have you worked with individuals

1 at Trinity in any of the prior derailments  
2 that you've worked around the country?

3 A. I can't recall my -- my  
4 experience with Trinity at derailments, but  
5 we are a Trinity vendor for C6r services.  
6 We're certified in valves and fittings, and  
7 Trinity is one of our customers.

8 Q. Okay. That was a lot of words  
9 that I didn't understand.

10 Can you tell me or explain a  
11 little bit in detail that I or a jury might  
12 understand what your relationship -- SPSI's  
13 relationship is with Trinity?

14 A. So in your question, you asked  
15 do we have derailment experience with  
16 Trinity, and I honestly can't recall any  
17 specific derailment-related work experience  
18 with Trinity.

19 However, on a periodic basis,  
20 your fleet management service, repair folks  
21 at Trinity, call upon our special service  
22 capabilities to go maybe change a valve on a  
23 car that needs changed. And perhaps it's an  
24 empty residue car, not a clean and purged  
25 car.

1                   So we can don PPE, we can go do  
2 things in the field with flaring and  
3 scrubbing and do things that most mobile  
4 repair shops can't do because they're not  
5 HAZMAT guys.

6           Q.       So that would be in the context  
7 of a derailment, you may be called on by  
8 Trinity to do some work on valves or other  
9 things you have expertise in?

10          A.       Well, in derailments, in my  
11 experience, Trinity wouldn't necessarily  
12 contract us at a derailment.

13                   Either the host railroad or if  
14 the derailment happened in a chemical plant,  
15 whoever's accident that it was, are generally  
16 the customer that would contract us. Not  
17 necessarily Trinity, the car owner.

18          Q.       So what's the situation, I  
19 guess I missed it, where Trinity would  
20 contract with you to perform the services  
21 that you described?

22          A.       So an example would be such  
23 where Trinity leases a car to X, Y, Z  
24 chemical company. And depending on how that  
25 lease is set up between Trinity and that

1 company, either Trinity is 100 percent  
2 responsible for the service equipment or  
3 their customer, the person leasing the car,  
4 may be responsible for maintaining service  
5 equipment.

6 In either case, regardless of  
7 who is commercially responsible for that  
8 service equipment, because of our C6r  
9 credentials and what the FRA enforcement  
10 folks are expecting out of us as a mobile  
11 repair unit, whether we're getting paid by  
12 the car leasor -- I guess leasor or leasee --  
13 I forget the legal terms there. But the  
14 person leasing the car, whether we're working  
15 for your customer or whether we're working  
16 directly for Trinity, either way, Trinity is  
17 in the loop because we're working on a  
18 Trinity car.

19 So it's a long way to answer  
20 your question, but that is truly how it  
21 works.

22 Q. No, and I appreciate that,  
23 because it's something I didn't understand  
24 before.

25 Based on the work that you've

1 done for Trinity in these circumstances, you  
2 have familiarity with their cars.

3 True?

4 A. In a broad sense. I mean, each  
5 car, as you know, is inherently different,  
6 set up for different customers.

7 Q. Let me ask you specifically now  
8 as to East Palestine.

9 I understand that you were in  
10 East Palestine beginning the evening of  
11 February 3rd of 2023.

12 Is that true?

13 A. Yes.

14 Q. And you were there at least  
15 through the vent and burn operations on the  
16 6th.

17 Correct?

18 A. Yes.

19 Q. During that time, from the 3rd  
20 to the 6th with the vent and burn, did you  
21 interact with anyone from Trinity when you  
22 were on the ground?

23 A. No, not that I recall.

24 Q. Okay. And that's no calls, no  
25 texts, no personal interactions.



1 True?

2 A. Not that I recall.

3 Q. No one from Trinity, to your  
4 knowledge, provided any input as to whether  
5 the vent and burn was a good idea or a bad  
6 idea.

7 True?

8 A. Not to me directly. I have no  
9 knowledge if they communicated with Norfolk  
10 Southern. I don't know.

11 Q. No one told you, hey, we spoke  
12 to Trinity, and this is their view.

13 Correct?

14 A. No.

15 Q. I am correct?

16 A. You're correct.

17 Q. Yeah. Thank you.

18 And no one from Trinity  
19 provided any input to you or to anyone else  
20 that you know regarding whether the VCM was  
21 polymerizing.

22 True?

23 A. To my understanding, that's  
24 true. Not to me. I wasn't privy to any  
25 conversations with Trinity in that.

1           Q.       Okay. And I'm going to try to  
2 not retread a lot of ground here from what's  
3 covered this morning. I might have to set  
4 some things up, so if you're -- if I sound a  
5 little repetitive, that's the only reason  
6 why.

7                    You understand, sir, that  
8 Trinity owned a single car, VCM car, that was  
9 involved in the derailment.

10                   Correct?

11           A.       I understand that now, after  
12 all this, yes.

13           Q.       Right.

14                   No dispute about that.

15                   Right?

16           A.       Correct.

17           Q.       That car, we've seen that  
18 you've referred to it as the eastern-most VCM  
19 car.

20                   Correct?

21           A.       Yes, sir.

22           Q.       It's also referred to as car  
23 TILX402025.

24                   Right?

25           A.       Yes.

1 Q. And I've seen it sometimes  
2 referred to as Car 26, sometimes referred to  
3 as Car 28, depending on whether you count the  
4 locomotives at the -- at the head of the  
5 train.

6 Is that fair?

7 A. I hadn't heard that before, but  
8 I would -- if people were doing that,  
9 counting locomotives makes sense.

10 Q. Okay. And it may not matter,  
11 but sometimes documents refer to it  
12 differently, so I want to make sure we're on  
13 the same page. I'll try be as clear as I can  
14 if it matters.

15 Okay?

16 A. Okay.

17 (McCarty Exhibit 15 marked for  
18 identification.)

19 QUESTIONS BY MR. SWANSON:

20 Q. And we're obviously going to  
21 spend a lot of time talking about the Trinity  
22 car today. But because I'm more of a visual  
23 person and most juries are more visual, I  
24 just want to show you a picture just so we  
25 can situate that car in the -- in the

1 derailment.

2                   So I'm going to mark -- and if  
3 we could put up, please, D34, which we'll  
4 mark as Exhibit 15.

5                   How about this then? I am such  
6 a knucklehead.

7                   Can we pull up -- we'll just do  
8 it. I'll put the video up later.

9                   If you guys need one, it's just  
10 a picture.

11                  So you have, sir, in front of  
12 you Exhibit 15.

13                  Is that what you have?

14           A.       Yes, sir.

15           Q.       Okay. And this is Exhibit D34  
16 from the NTSB hearings.

17                  Correct?

18           A.       Yes.

19           Q.       You can see it's titled  
20 "Figure 1, Hazardous Materials Group Chair's  
21 Factual Report," and then it's a labeling of  
22 the various cars that were involved in the  
23 derailment.

24                  Is that what you have, sir?

25           A.       Yes.

1 Q. If you look at the second page  
2 of Exhibit 15, the bottom photograph, you can  
3 see a picture of a car that's designated 28.

4 Do you see that?

5 A. Yes.

6 Q. If you then look at the chart  
7 on the side of those photographs, you can see  
8 the reference that the Car 28 is TILX402025.

9 Right?

10 A. Yes, sir.

11 Q. Okay. And can I call that for  
12 shorthand the Trinity VCM car?

13 A. Absolutely, yes.

14 Q. Okay. And we'll understand  
15 we're talking about the very same car.

16 Right?

17 A. Yes, sir.

18 Q. It was -- there was a question  
19 this morning about whether that had ever been  
20 referred to as the white car.

21 It sounded like that wasn't  
22 something you were familiar with?

23 A. I hadn't heard anybody refer to  
24 it as the white car, but --

25 Q. I hadn't either, but it makes

1 sense looking at the picture.

2 A. Yeah, it's painted white.

3 Yeah.

4 Q. Okay. And specifically now,  
5 not just looking at the picture, but in  
6 seeing the picture, you recall specifically  
7 that car when you were on the ground in East  
8 Palestine between the 3rd and the 6th.

9 Correct?

10 A. Yes, sir.

11 Q. Thank you. Now you can set it  
12 aside.

13 A. I just thought I was  
14 identifying the car. I'm sorry.

15 Q. Okay. And obviously, unless I  
16 tell you differently, my questions today are  
17 going to focus on that Trinity car and not on  
18 the -- on the other VCM cars, unless I tell  
19 you.

20 Okay?

21 A. Okay. Thank you.

22 Q. And I think agree with me that  
23 the Trinity VCM car was differently situated  
24 than the other VCM cars in the derailment.

25 Correct?

1           A.       Yes, it was.

2           Q.       And we're going to talk about  
3     the reasons for that as we go through the  
4     testimony.

5                   Did you know, sir, that Norfolk  
6     Southern has filed a lawsuit against Trinity  
7     relating to the derailment in East Palestine?

8           A.       I have become aware of that in  
9     this process.

10          Q.       Okay. And from your hand  
11     gestures, it's something you learned from the  
12     attorneys?

13          A.       Well, being subpoenaed to be  
14     here was kind of when it came together for  
15     me.

16          Q.       Let me ask a better question.  
17                   When did you first learn that  
18     Norfolk Southern had filed a lawsuit against  
19     Trinity relating to the East Palestine  
20     derailment?

21          A.       I can't remember if it was  
22     mentioned in news articles when the press  
23     release went out, whether Trinity was named  
24     or not or whether it was my subpoena for this  
25     deposition. I can't pinpoint of when I knew.

1           Q.       And you also don't recall how  
2   it was that you learned of the lawsuit  
3   against Trinity?

4           A.       No.   And to this moment, I  
5   really don't even know the nature of it.

6           Q.       You're anticipating my  
7   questions --

8           A.       Okay.

9           Q.       -- so let me -- so you don't  
10   know anything about the specific claims that  
11   have been made against Trinity by Norfolk  
12   Southern.

13                   Correct?

14           A.       I do not.

15           Q.       I'm still going to ask you  
16   about some of them, okay --

17           A.       Sure.

18           Q.       -- and see if you have any  
19   comment on the allegations that have been  
20   made.

21                   In the complaint that Norfolk  
22   Southern filed against Trinity, they allege  
23   that Trinity's VCM car, Car 26, has  
24   discrepancies between its AAR 4-2 Certificate  
25   of Construction and the tank car's actual



1 characteristics. That's what they allege.

2 Okay?

3 MR. HANSON: Can we just rely  
4 that that's their representation of  
5 what they say? Because he said he's  
6 never seen that.

7 MR. SWANSON: Yeah, I know, and  
8 I don't want to -- I'm not hiding  
9 anything. I'm just not going to mark  
10 it as an exhibit. But if you guys  
11 want to look at it, I have no problem  
12 with that.

13 MR. HANSON: Thank you.

14 And what paragraph was that,  
15 sir?

16 MR. SWANSON: So this is  
17 paragraph 120 --

18 MR. HANSON: Okay.

19 MR. SWANSON: -- of the  
20 complaint that Trinity -- or excuse  
21 me, Norfolk Southern filed against  
22 Trinity. So that's on page 24, if you  
23 want to follow along.

24 Okay?

25 MR. HANSON: Thank you.

~~Confidential~~ Pursuant to Protective Order

1 THE WITNESS: Yes, thank you.

2 QUESTIONS BY MR. SWANSON:

3 Q. So do you see on paragraph 120  
4 of the complaint that Norfolk Southern filed,  
5 it says, "Here, there were multiple  
6 discrepancies identified by the Federal  
7 Railroad Administration between the approved  
8 documents and the actual physical  
9 characteristics of the vinyl chloride tank  
10 cars on Train 32N."

11 Do you see that?

12 A. Yes, sir.

13 Q. 32N is obviously the train that  
14 derailed?

15 A. Train --

16 Q. Okay. And then what I just  
17 read to you is subparagraph A in 120, which  
18 reads, "Trinity Industries Leasing Company's  
19 Car 26 has discrepancies between its AAR 4-2  
20 Certificate of Construction and the tank  
21 car's actual characteristics."

22 Did I read that correctly, sir?

23 A. Yes, I'm glad you did, because  
24 when I glanced at it, I thought it was first  
25 saying you had 26 discrepancies, and I was

1     like, wow, that was a lot.

2                     But I'm sorry -- yes, never  
3     mind.   The 26th car, I'm following you so  
4     far.

5             Q.       Okay.  And that's -- right?  
6     That's why I had it make it clear.

7                     You understand that's the  
8     Trinity VCM car.

9                     Correct?

10            A.       Yes, sir.

11            Q.       What's an AAR 4-2 Certificate  
12     of Construction?

13            A.       In basic terms, it's the birth  
14     certificate of the tank car.  Certificate of  
15     Construction is the -- what they call a COC,  
16     Certificate of Construction.

17            Q.       Have you ever seen the  
18     Certificate of Construction for Trinity's VCM  
19     car?

20            A.       I have not.

21            Q.       Sitting here today, can you  
22     tell me what any of these so-called  
23     discrepancies are between the Certificate of  
24     Construction and the Trinity car that Norfolk  
25     Southern detonated on February 6th of 2023?

1           A.       And where are you guiding me to  
2 look specifically? I'm sorry, can -- your  
3 question again? Where do you want me to look  
4 for --

5           Q.       Let me try it again.

6                   Sitting here today, can you  
7 tell me what any of these so-called  
8 discrepancies are between the Certificate of  
9 Construction for Trinity's VCM car and the  
10 Trinity car that Norfolk Southern detonated  
11 on February 6, 2023?

12          A.       In the first part of your  
13 question -- I haven't read all of this, but  
14 are they about to outline their claims of  
15 discrepancies? Because I've never seen the  
16 Certificate of Construction.

17          Q.       Okay. So has anybody ever told  
18 you that alleged discrepancies existed  
19 between the Certificate of Construction and  
20 Trinity's VCM car that you detonated -- that  
21 Norfolk Southern detonated in East Palestine?

22          A.       Other than listening to Randy  
23 Keltz's testimony in panel 4 back in June, I  
24 caught that he found some discrepancies where  
25 car didn't match paper, paper matched car, in

1 Randy Keltz's words. But beyond that, I  
2 don't know.

3 Q. Okay. So that -- you're  
4 referring there to the NTSB hearings that  
5 happened in June of 2023.

6 Right?

7 A. Yes, sir.

8 Q. Months after the vent and burn  
9 operation on February 6th of 2023.

10 Correct?

11 A. Yes.

12 Q. To the extent there were  
13 discrepancies between the Certificate of  
14 Construction and the car that existed in East  
15 Palestine, those alleged discrepancies had  
16 nothing to do with the decision to include  
17 Trinity's VCM car in the vent and burn  
18 operation.

19 Correct, sir?

20 MR. LEVINE: Objection.

21 THE WITNESS: I was going to  
22 say, I can't speak for Norfolk  
23 Southern's HAZMAT staff.

24 In my observations of that car,  
25 that -- the answer would be no to your

1 question, I believe. It just -- your  
2 question is, any nonconformance that  
3 Randy Keltz identified weeks later,  
4 the answer is, it didn't play into our  
5 decision, if that's what you're -- if  
6 that's what your question was.

7 QUESTIONS BY MR. SWANSON:

8 Q. That's what my question should  
9 have been, because you phrased it better than  
10 I.

11 Whatever discrepancies  
12 Mr. Keltz identified in his June testimony to  
13 the NTSB, those discrepancies, whether they  
14 existed or not, had nothing to do, in your  
15 view, with the decision to vent and burn  
16 Trinity's VCM car February 6, 2023, correct?

17 MR. LEVINE: Objection.

18 THE WITNESS: From my vantage  
19 point at SPSI, I can only speak to  
20 what I observed. And I can't  
21 speculate of what information Norfolk  
22 Southern may or may not have had.

23 Their -- if they had access to  
24 chain -- not chain of custody. I'm  
25 sorry, certificate -- COC. We also

1 say chain of custody in our work. The  
2 COC.

3 I don't know if NS had access  
4 to the Certificate of Construction or  
5 not. I just don't know. So I can't  
6 speak for the whole, but I can speak  
7 for SPSI.

8 QUESTIONS BY MR. SWANSON:

9 Q. Okay. So, and I appreciate  
10 that. And I'm going to get this question  
11 right here, and then we'll move on.

12 Whatever discrepancies  
13 Mr. Keltz identified in his June testimony to  
14 the NTSB, those discrepancies, whether they  
15 existed or not, had nothing to do with your  
16 view of whether Trinity's VCM car should be  
17 detonated in the vent and burn, February 6,  
18 2023.

19 Correct?

20 A. I won't say correct in -- I  
21 got -- I got to flag your word "detonation"  
22 in that sentence because I don't want to  
23 accidentally get saying yes to the word  
24 "detonation."

25 I agree to the -- to the --

1 these non-conformances, whatever Randy Keltz  
2 flagged, would not have had any bearing on  
3 the tactical assessments that we were making  
4 in the field.

5 The emergency de-inventory  
6 process known as vent and burn would be the  
7 right way to say things like that, is why I  
8 wanted to get that clarified.

9 Q. Are you -- and that's fine.  
10 I'll take that answer.

11 Are you aware of anyone on the  
12 ground in East Palestine between February 3rd  
13 and February 6th when the vent and burn  
14 occurred who had any knowledge at all of  
15 these so-called discrepancies that Mr. Keltz  
16 claims to have identified in his testimony to  
17 the NTSB in June?

18 A. No, I was never made aware of  
19 any.

20 Q. Does the same go for the  
21 Certificate of Construction for the Oxy  
22 Vinyls cars? Did you see any of those when  
23 you were on the ground in East Palestine?

24 A. No. During that weekend, we --  
25 and to this day, I haven't seen Certificates



1 of Construction on any of them. So, no,  
2 that -- we didn't have access to that data.

3 Q. So whatever was contained in  
4 the Certificates of Construction for the  
5 derailed VCM cars, it had nothing to do with  
6 the decision to vent and burn any of those  
7 VCM cars.

8 Fair?

9 MR. HANSON: Objection.

10 MR. LEVINE: Objection.

11 THE WITNESS: Yeah, I guess I'm  
12 going to flag the word "decision." It  
13 wasn't our decision to do that, but,  
14 yeah, we had no access to that  
15 information.

16 QUESTIONS BY MR. SWANSON:

17 Q. Okay. Let me -- let me -- I  
18 want to get this right.

19 You, Drew McCarty, recommended  
20 that the five -- ultimately recommended that  
21 the five VCM cars all be included in the vent  
22 and burn operation.

23 True?

24 A. Norfolk Southern ultimately  
25 recommended all five.

1           Q.       I want to know if you  
2 recommended.

3           A.       We, the contractor team and the  
4 Norfolk Southern HAZMAT team, we knew we were  
5 going to have to take four, and five was if,  
6 and only if, mechanical couldn't do something  
7 with that fifth car quickly, efficiently and  
8 safely.

9                       And someone from mechanical  
10 assessed that and determined, no, it's not  
11 safe to put people in there. We're not going  
12 to go through the effort to move it. It's  
13 just got to go with the other ones.

14                      So that's my paraphrasing of  
15 how that went down.

16           Q.       Okay. And believe me, we're  
17 going to talk about that.

18           A.       Okay.

19           Q.       My question is, you, Drew  
20 McCarty, recommended to the folks at Norfolk  
21 Southern and perhaps others at the end of the  
22 day that all five vinyl chloride cars be  
23 included in the vent and burn.

24                      True?

25                      MR. LEVINE: Objection.

1 THE WITNESS: Yeah. Started  
2 off Saturday evening with -- after  
3 that event with that activating PRD on  
4 that third car that we talked about  
5 this morning.

6 My presentation to Scott  
7 Deutsch and Scott Gould after that  
8 was, I think we just lost hot-tapping.  
9 Need to be considering vent and  
10 burning, was the exact words.

11 Beyond that, the NS staff, the  
12 contractor staff, over the next, you  
13 know, 24-hour period certainly  
14 considered every tactical option  
15 possible and kept getting back to vent  
16 and burn as the safest approach.

17 QUESTIONS BY MR. SWANSON:

18 Q. When the vent and burn was  
19 executed on February 6th, was it your view,  
20 Drew McCarty's view, that all five vinyl  
21 chloride cars should be included in the vent  
22 and burn?

23 Yes or no?

24 A. Yes. On the 6th, yes.

25 Q. And the Certificates of

1 Construction for any of those cars had  
2 nothing to do with you arriving at that view.

3 True?

4 A. Correct.

5 Q. Thank you.

6 Let's look, if we can, at  
7 page 167. Excuse me, paragraph 167, which is  
8 page, it looks like, 34.

9 A. I'm sorry, what --

10 Q. 167.

11 A. 167.

12 Q. That's okay.

13 A. I had 157. Sorry.

14 Q. On page 34 of the complaint  
15 that Norfolk Southern filed against Trinity,  
16 paragraph 167 reads, "Oxy Vinyls shipped  
17 vinyl chloride in tank cars with aluminum  
18 components in the pressure release devices  
19 and in other components on each of the vinyl  
20 chloride tank cars. For example, Cars 26,  
21 27, 28 and 29 contained aluminum in the PRD  
22 springs, PRD surface, or had aluminum used in  
23 various valves on the tank car."

24 And I'll stop there.

25 Did I read that correctly, sir?

1           A.       Yes.

2           Q.       At the time that the vent and  
3       burn of the five VCM cars occurred on  
4       February 6th, were you aware of any aluminum  
5       components that existed in any of the VCM  
6       cars that were vented and burned?

7           A.       No, sir.

8           Q.       Sitting here today, do you know  
9       whether that's true or not, that any of the  
10      VCM cars contained aluminum in PRD springs,  
11      surfaces or in other valves?

12          A.       It first came up to my  
13      attention with Randy Keltz's questioning back  
14      on the -- February whatever day it was in the  
15      church, their first interview of me.

16                    I didn't -- I was not aware.  
17      So he brought it to my attention that that  
18      seemed to be part of their observations. So  
19      that was the first I'd even had an inkling on  
20      aluminum components.

21          Q.       Okay. Thank you.

22          A.       Yes, sir.

23          Q.       Let me just ask you a broad  
24      question.

25                    As someone who was on the

1 ground from February 3rd to February 6th when  
2 the vent and burn occurred, can you tell me a  
3 single thing you believe Trinity did wrong?

4 A. No, sir. To my knowledge,  
5 didn't even know Trinity was engaged.

6 Q. Can you identify anything that  
7 Trinity did that you believe they shouldn't  
8 have done?

9 A. Once again, I wasn't even aware  
10 of Trinity being involved.

11 Q. Anything that you sought from  
12 Trinity that they didn't provide for you?

13 A. Didn't know they were involved.

14 Q. Well, you knew they had a car  
15 involved.

16 Right?

17 A. Well, yeah. But as far as  
18 personnel, I wasn't sure if NS reached out to  
19 Trinity or vice versa. I don't know.

20 Q. Okay. Let's talk now a bit  
21 more specifically about Trinity's VCM car in  
22 the derailment.

23 You agree with me, I think,  
24 that Trinity's VCM car didn't cause the  
25 derailment.

1 Right?

2 A. No, I think the NTSB's honed in  
3 on a hot wheel bearing of a car.

4 Q. Right.

5 Let me -- sometimes a double  
6 negative.

7 You agree with me that  
8 Trinity's VCM car did not cause the  
9 derailment.

10 Correct?

11 MS. KARIS: Objection to  
12 foundation.

13 THE WITNESS: As I say, I'm not  
14 a root cause derailment finding kind  
15 of guy. I'm just going off the NTSB  
16 report that says it was a covered  
17 hopper car wheel bearing.

18 QUESTIONS BY MR. SWANSON:

19 Q. The Trinity VCM car didn't  
20 breach upon derailment.

21 Correct?

22 A. That's correct.

23 Q. You agree with me that the  
24 derailment in East Palestine was a violent  
25 derailment.

1 Right?

2 A. Yes.

3 Q. How fast were those -- how fast  
4 was 32N going through East Palestine when it  
5 derailed.

6 Do you know?

7 A. My understanding was between 45  
8 and 50 mile an hour.

9 Q. The Trinity VCM car stayed  
10 intact despite derailling at that speed.

11 Right?

12 A. Yes.

13 Q. Did you at any point perform a  
14 damage assessment on Trinity's VCM car?

15 A. I personally did not.

16 Q. Do you know if one was done?

17 A. Yes. My understanding was  
18 mechanical and Chip Day did one sometime  
19 between Sunday afternoon and Monday morning.

20 Q. So before the vent and burn?

21 A. Yes.

22 Q. Were you made privy to their  
23 findings?

24 A. Yes.

25 Q. Did anybody identify any dents



1 in Trinity's VCM car?

2 A. I don't know the specifics. I  
3 was just told that mechanical didn't think  
4 they could re-rail it due to whatever  
5 reasons, and they didn't want to put people  
6 in there for extended operations.

7 Q. So am I correct that the damage  
8 assessment of Trinity's VCM car was done in  
9 the context of determining whether it could  
10 be moved or re-railed?

11 A. Again, I didn't do that, so I  
12 don't want to speculate on mechanical's  
13 approach to that.

14 Mechanical department handles  
15 wreck clearing, so that's -- it's really a  
16 question for NS mechanical.

17 Q. Okay. I'll return to that.

18 So you can't tell me, sitting  
19 here today, whether the Trinity VCM car had  
20 any scores, gouges or anything else?

21 A. We were starting to do that  
22 process on Saturday afternoon when the third  
23 car in did what it did. And the minute it  
24 did what it did, the guys got out of there,  
25 and we never got back to that.

1 Q. Now, what we do know is that  
2 Trinity's VCM car was not subjected to the  
3 pool fires that you've talked about today.

4 Correct?

5 A. Not the sustained pool fires.  
6 The charring you see, it appeared in our  
7 first drone flyover with the local sheriff's,  
8 drone. You could see that there had been a  
9 fire under it, charred paint and a little bit  
10 of kind of smoky residual out on the ballast  
11 in the first, but it didn't have a sustained  
12 duration pool fire that caused us too much  
13 concern with the thermal blanket that it has  
14 on it.

15 (McCarty Exhibit 16 marked for  
16 identification.)

17 QUESTIONS BY MR. SWANSON:

18 Q. Can we pull up, which I think I  
19 sent you, D 61?

20 Okay. What I've handed you has  
21 been marked as Exhibit 16. This is  
22 Exhibit D 61 from the NTSB hearing.

23 It's a one-page. It's a  
24 photograph entitled "UAS Aerial Photograph,  
25 TILX402025 Proximity to Pool Fire,

1 February 3rd to 4th, 2023, Time Unknown."

2 Is that the document you have  
3 in front of you, sir?

4 A. Yes.

5 Q. And are you aware of aerial  
6 photographs that were taken of the derailment  
7 the evening of February 3rd and 4th?

8 A. Yes.

9 Q. If you look at the picture on  
10 the second page of Exhibit 16, is this  
11 something you've seen before?

12 A. Yes.

13 Q. You can see the red circle  
14 around a white train car. You understand  
15 that to be Trinity's VCM car.

16 Correct?

17 A. Yes, sir.

18 Q. The pool fires that you've been  
19 describing, correct me if I'm wrong, but  
20 those are the bright fire that seems to be  
21 lit sort of to the left -- left-hand upper  
22 corner of the train? Train car? Excuse me.

23 A. That's correct. That's the  
24 fire that involved the 29th, 30th and 31st  
25 cars.

1 Q. Okay. So if we look at  
2 Exhibit 16, the fire that we see at the top  
3 of the -- of the photo there, that's engulfed  
4 three of the other VCM tank cars?

5 A. Yes, sir.

6 Q. And that fire is not, at least  
7 in this photograph, impinging in any way on  
8 Trinity's VCM car.

9 Correct?

10 A. There had been a little bit of  
11 radiant heat, but not dramatic.

12 Q. Okay. So there was some  
13 radiant heat that caused charring on the  
14 outside of the tank car?

15 A. Yes.

16 Q. And then you can see another  
17 fire in the lower right-hand corner.

18 Do you know what that is, sir?

19 A. Yes. That was a breached  
20 plastic pellets car. That was just, you  
21 know, solid plastic pellets burning.

22 Q. And was that fire in any way  
23 impinging on the Trinity VCM car that we see  
24 in this photo?

25 A. Subtle, very subtle radiant

1 heat, but, no.

2 Q. And I just want to make sure  
3 it's clear. You've testified previously  
4 Trinity's VCM tank car was not subjected to  
5 pool fires.

6 Do you recall that in your  
7 statement to the NTSB?

8 A. I do. And I guess I --

9 Q. And that's accurate.  
10 Correct?

11 A. It is. I should have had the  
12 preface of sustained pool fires. Because you  
13 can see that -- and even in the same red  
14 circle, if you see a little bit of smoky,  
15 smoky there, it was early recognized that,  
16 you know, whatever that original, you know,  
17 burning was, it had subsided back into  
18 that -- like whatever liquids were burning  
19 underneath all the other ones, it may have  
20 initially surged under pressure that way but  
21 just burned back. It's just one of those  
22 things that whatever was burning, burned out  
23 early.

24 Q. Got it.

25 So when you said at the outset

1 of my questioning that the Trinity VCM car  
2 was situated differently from the other VCM  
3 cars, one reason is that it wasn't subjected  
4 to sustained pool fires.

5 Correct?

6 A. Correct.

7 Q. Another way that it was  
8 distinguished from the other VCM cars is  
9 that -- is that Trinity's VCM car had  
10 functioning valves on it even after the  
11 derailment.

12 Right?

13 A. We cycled one vapor valve with  
14 a pressure gauge to get a gauge reading. We  
15 didn't cycle the other valves.

16 Q. So it had at least a  
17 functioning valve.

18 Right?

19 A. Yes.

20 Q. That was an angle valve on  
21 the -- on the tank car.

22 Correct?

23 A. Yes, sir.

24 Pardon my voice. I'm sorry.

25 Q. That's okay. If you need to

1 break or water, you just let me know. It's  
2 not a -- it's not a marathon for you.

3 You were able to put a pressure  
4 gauge on the Trinity VCM car after the pool  
5 fires had subsided.

6 Right?

7 A. That was our entry Saturday  
8 afternoon when we felt -- you know, after the  
9 pool fires had calmed down, the pressure  
10 relief devices had calmed down on those other  
11 cars, I guess the 30, 31 cars, that was the  
12 era on Saturday afternoon where we had an  
13 entry team, you know, going towards the  
14 isobutylene car, an entry team going to the  
15 Trinity car, to start getting pressure gauges  
16 on them, start seeing what the internal  
17 pressures were, get temperatures. We were  
18 starting to do those kinds of things, look at  
19 the damage assessment, when that 30th car did  
20 what it did and drove us all out of there.

21 Q. Right.

22 So before the sustained venting  
23 of 8179, you or your team were able to access  
24 the Trinity VCM car and put a pressure gauge  
25 on an angle valve and measure the pressure of

1     that car.

2                     Correct?

3             A.       Yes. And that wasn't me. That  
4     was part of my team, yes.

5             Q.       But you knew it happened?

6             A.       Yes.

7             Q.       You were aware that the  
8     pressure readings that they obtained from  
9     Trinity's VCM car were not alarming.

10                    Correct?

11            A.       That's correct.

12            Q.       And you now know that the  
13   pressure readings that you obtained from  
14   the -- you and your team obtained from the  
15   Trinity VCM car never exceeded 60 PSI from  
16   any reading you ever took from it.

17                    Right?

18            A.       I'll take your -- if that's in  
19   the data, yes, that's an accurate statement.

20            Q.       Or 60 to 65. I'll give you a  
21   range.

22                    The pressure readings from  
23   Trinity's VCM car were never alarming to you  
24   during your time on the ground in East  
25   Palestine.



1 Correct?

2 A. That's true. That's an  
3 accurate statement.

4 Q. And because you were able to  
5 attach the gauge right to the angle valve,  
6 you didn't question the accuracy of the  
7 pressure readings that you obtained from that  
8 car.

9 Right?

10 A. No, we got a good vapor  
11 pressure curve.

12 Q. So whatever the pressure  
13 readings that are reflected in the records  
14 for the Trinity car, those are accurate in  
15 your view.

16 Correct?

17 A. For the Trinity car.

18 Q. Yep. That's what I'm asking  
19 about --

20 A. Yes.

21 Q. -- the Trinity car.

22 Okay. Now, in addition to  
23 having accurate pressure readings from the  
24 Trinity VCM car, you also had temperature  
25 readings that you took from that car.

1 Correct?

2 A. I'm understanding that that was  
3 included in the efforts, yes.

4 Q. Okay. And you talked a lot  
5 about the temperature readings in response to  
6 questions this morning. I don't want to  
7 rehash all of that.

8 But you did -- your testimony  
9 today, as I understand it, is that your view  
10 is that the pressure reading -- or the  
11 temperature readings for the VCM cars were  
12 not reliable.

13 Is that -- is that your  
14 testimony?

15 A. It is.

16 Q. Now, I want to ask you  
17 specifically about the temperature readings  
18 you got for the Trinity VCM car.

19 And if you could pull out  
20 Exhibit 1, and turn it to page 92. This is  
21 the factual -- the Hazardous Materials Group  
22 Chair's Factual Report you testified about  
23 this morning. So Exhibit 1, page 92.

24 MR. HANSON: It's that one.

25 THE WITNESS: No, this is

1 Exhibit 4. I'm sorry. I'm sorry.

2 I'm reading it wrong.

3 MR. HANSON: What page?

4 MR. SWANSON: Yeah, sure.

5 Page 92 of 158. It's the one you were  
6 looking at earlier.

7 THE WITNESS: I may need a  
8 voice break here soon. I'm not sure  
9 what's going on with my throat, but...

10 MR. SWANSON: You want to take  
11 one now?

12 THE WITNESS: We'll get through  
13 this. Go ahead.

14 QUESTIONS BY MR. SWANSON:

15 Q. Okay. All right. You have  
16 page 92 of Exhibit 1 open in front of you,  
17 sir?

18 A. Yes, sir.

19 Q. And you recognize this. You  
20 testified about it this morning, the  
21 temperature readings that were taken from the  
22 VCM cars.

23 Right?

24 A. Yes.

25 Q. On the -- there's a chart

1     there, Table 12.

2                     Do you see that?

3             A.       Yes, sir.

4             Q.       On the far left, that car --  
5     the left-hand column of that chart, you see  
6     TILX402025?

7             A.       Yes.

8             Q.       Trinity's VCM car?

9             A.       Yes, sir.

10            Q.       There are temperature readings  
11   that go from, looks like, 4 -- if my military  
12   time is correct, 4 p.m. on February 5th  
13   through 2:30 p.m. on February 6th.

14                     Is that right?

15            A.       I think so. I think that  
16   sounds right.

17            Q.       Okay. And 2:30 on  
18   February 6th, that's just a couple hours  
19   before the vent and burn was initiated.

20                     Correct?

21            A.       Yes.

22            Q.       You can see, if -- you might  
23   have to squint. I'll try to represent to you  
24   that the temperature readings that were  
25   obtained from the Trinity VCM car never

1 exceed 65 degrees.

2 Is that accurate?

3 A. Yes. From however they were  
4 doing with a laser pointer, yeah.

5 Q. Okay. And they used the same  
6 device --

7 A. Yeah.

8 Q. -- on the Trinity car that they  
9 used on all the VCM cars.

10 Right?

11 A. They did.

12 Q. And what you know from looking  
13 at some of the other documents that you saw  
14 this morning is that the temperature relates  
15 to the pressure in the tank car.

16 Right?

17 A. An accurate temperature -- in  
18 the case of the Trinity car, we had an  
19 accurate pressure reading with our gauge. So  
20 the temperatures here, again, I'm going to  
21 say, are meaningless because they were taken  
22 from outside the jacket of the car without  
23 contacting tank shell.

24 Q. Well --

25 A. This car, even though the data,

1     you know, appears favorable, I'm going to  
2     tell you I don't believe that the Trinity car  
3     was polymerizing. That was not a concern of  
4     mine with that eastern-most car.

5             Q.       And I appreciate that, and  
6     we're going to talk more about that.

7                     But is it -- is it your  
8     testimony that in your view, between  
9     February 3rd and February 6th, the Trinity  
10    VCM car was never polymerizing.

11                    Correct?

12            A.       Correct.

13            Q.       And these -- the temperature  
14    readings that were obtained for the Trinity  
15    car are consistent with the pressure readings  
16    that you had obtained for that car.

17                    Correct?

18            A.       It -- coincidentally, yes. But  
19    this is outside jacket temperatures, is what  
20    this was reading, not the liquid temperature  
21    inside the car.

22            Q.       Well, it's not a jacket  
23    temperature; it's through a hole in the  
24    jacket.

25                    Right?

1           A.       Again, the holes that our guys  
2   had put on notes, I -- they -- they've told  
3   me repeatedly in my interviews with them,  
4   getting all of that clarified, they didn't  
5   have good access to the tank. That's the  
6   real information that somehow didn't get put  
7   to paper.

8           Q.       Okay. So the temperature  
9   readings for Trinity's car are consistent  
10   with the accurate pressure readings that you  
11   obtained. In your view, that's just a  
12   coincidence.

13                   Is that your testimony?

14           A.       These temperature readings here  
15   are no less -- are no more representative of  
16   liquid in the car than the ones that were  
17   collected for the other three cars on that  
18   east end. That's the -- that's what I'm  
19   trying to make sure is very clear.

20                   This data happens to  
21   coincidentally coincide with the vapor  
22   pressure curve of VCM.

23           Q.       But for the Trinity car, you  
24   weren't concerned about the temperature  
25   readings because you had the pressure

1 readings that you relied on.

2 Correct?

3 A. That's correct.

4 Q. From the -- from the time of  
5 the derailment to the time that Norfolk  
6 Southern executed the vent and burn on the  
7 five VCM cars, you weren't really worried  
8 about Trinity's car from a safety, blowing up  
9 kind of thing. Those are your words.

10 Correct?

11 A. Correct.

12 Q. You and your team determined  
13 that the VCM in Trinity's VCM car remained  
14 stable from the time of derailment to the  
15 time of the vent and burn.

16 Correct?

17 A. It did not show us any  
18 indication that it was polymerizing.

19 Q. So I'm correct; it was your  
20 view that the VCM in Trinity's VCM car  
21 remained stable from the time of derailment  
22 to the time of the vent and burn.

23 Correct?

24 A. Correct.

25 Q. At least leading up to the



1 decision to include Trinity's VCM car in the  
2 vent and burn, you were hopeful that that car  
3 could be re-railed and sent on its way.

4 Right?

5 A. I was.

6 Q. Okay. And obviously that's  
7 something that you would never recommend to  
8 anybody if you believed there was a risk of  
9 polymerization in that car.

10 Right?

11 A. Right.

12 Q. That's not something that you  
13 would recommend to anybody if you believed  
14 that there was a risk of a BLEVE occurring in  
15 that car.

16 Correct?

17 A. Correct.

18 Q. And I'm not sure it's in the  
19 record. What's a BLEVE?

20 A. Boiling Liquid Expanding Vapor  
21 Explosion.

22 Q. That's a bad thing.

23 Right?

24 A. That's a bad thing.

25 Q. Okay. And you didn't have any

1 concern about Trinity's VCM car as it related  
2 to any potential BLEVE.

3 Right?

4 A. No, we did not.

5 Q. We're going to talk about this  
6 later, but you ultimately -- or your crews  
7 ultimately determined that they couldn't  
8 re-rail the Trinity's VCM car.

9 Right?

10 A. Well, for clarity, it would  
11 have been the mechanical department that did  
12 that walkthrough with Chip Day.

13 Q. Are you aware of the reason, or  
14 were you told the reason that the car could  
15 not be re-railed?

16 A. I don't recall specifics, but  
17 it was a recipe of putting a lot of people in  
18 there to move the car, and again, putting an  
19 extended operation into a hazardous area. If  
20 they got it re-railed, it wouldn't stay on  
21 the trucks.

22 I can't remember, you know, all  
23 the details because I didn't do the damage  
24 assessment, but they just said they couldn't  
25 re-rail it. If they tried, it was going to

1 be an extended operation with a lot of people  
2 in there, and it was just not worth the risk.

3 Q. Got it.

4 You testified this morning  
5 you've been involved in a lot of train  
6 derailments over the course of your career.

7 Right?

8 A. Yes.

9 Q. Do you agree with me that  
10 Trinity's VCM car performed exactly as it was  
11 designed to perform in the event of a  
12 derailment like that in East Palestine?

13 MR. HANSON: Objection.

14 THE WITNESS: Yeah, the word  
15 "exactly" is -- again, I'm not like  
16 every micro detail. It's kind of like  
17 the chemistry question repeatedly this  
18 morning. I'm not a micro deal tank  
19 car builder/engineer to know exactly  
20 what all those exactlys mean.

21 You know, my 35 years'  
22 experience and a lot of derailments, a  
23 lot of tank car knowledge, what I  
24 expect in a derailment is for a tank  
25 car to hold together. Okay?

1 But I also expect that when  
2 they're critically damaged or have  
3 signs of damage, and especially hidden  
4 damage that is the wildcard in a lot  
5 of this, it's a dangerous thing.

6 QUESTIONS BY MR. SWANSON:

7 Q. I understand. And I'm not  
8 looking for minutiae here.

9 You're somebody who goes on to  
10 derailment sites and is worried about the  
11 safety of the community around and making  
12 sure that everyone is safe.

13 Right?

14 A. Yes.

15 Q. The Trinity car in this  
16 derailment, for your purposes, performed  
17 exactly as you would want it to perform in a  
18 derailment like happened in East Palestine.

19 Right?

20 MR. LEVINE: Objection.

21 THE WITNESS: Well, there's  
22 that word "exactly" again. It  
23 performed well. It kept the product  
24 in the car.

25

1 QUESTIONS BY MR. SWANSON:

2 Q. The pressure release device on  
3 Trinity's VCM car, I think I heard your  
4 testimony this morning that that pressure  
5 release device never actuated upon the  
6 derailment?

7 A. We never observed it going off.  
8 I guess the caveat to that is, did it go off  
9 in the first two hours and I'm not aware of  
10 that I wasn't there? But I -- we have no  
11 observations of it ever going off.

12 Q. If it did actuate, okay, if it  
13 did actuate, but you didn't see it but it did  
14 actuate, it performed as it was intended to  
15 perform.

16 Right?

17 MR. LEVINE: Objection.

18 THE WITNESS: Yeah, that would  
19 be speculative.

20 And I'll just go ahead and put  
21 on the record because -- the reason  
22 we're pretty confident it never  
23 actuated is because of that pressure  
24 reading that we got.

25 Had it activated, it would have

1           activated it at, you know, over a  
2           200-some PSI. So the pressure gauge  
3           would have picked up on that.

4   QUESTIONS BY MR. SWANSON:

5           Q.       Sorry, I didn't mean to  
6           interrupt you.

7           A.       No, you're fine.

8           Q.       I'll put it differently.

9                    Can you identify any  
10          performance issues with the VCM -- or with  
11          Trinity's VCM car, either its structure or  
12          its -- or its PRD following the derailment?

13          A.       No, I can't say that I can.

14                   MR. SWANSON: All right. Do  
15          you want to take your voice break?

16                   THE WITNESS: Can I, please? I  
17          don't know what's going on, but I --

18                   MR. SWANSON: Let's go off the  
19          record.

20                   VIDEOGRAPHER: Off the record  
21          at 3:14.

22                   (Off the record at 3:14 p.m.)

23                   VIDEOGRAPHER: We are now back  
24          on the record at 3:29.

25

1 QUESTIONS BY MR. SWANSON:

2 Q. Mr. McCarty, I want to ask you  
3 a few questions about your arrival in East  
4 Palestine.

5 As I understand it, you arrived  
6 in the town late February 3rd.

7 Is that right?

8 A. Yes.

9 Q. Shortly after the derailment  
10 had occurred?

11 A. Well, you know, define  
12 "shortly," I guess. It would have been the  
13 evening.

14 Q. You tell me what time it was.  
15 That'll help.

16 A. Yeah, well, I don't remember.  
17 I didn't timestamp when I pulled on-site.  
18 That's a popular question these last several  
19 months. So I don't recall what time I  
20 actually got on-site.

21 Q. Got it. And that's fine.

22 It was sometime before midnight  
23 on the 3rd?

24 A. Yes.

25 Q. You were contacted, as I

1 understand it, by Scott Deutsch?

2 A. Yes.

3 Q. Who is Scott Deutsch?

4 A. Scott Deutsch is one of the  
5 Norfolk Southern's HAZMAT managers. He  
6 happens to be the -- I guess the senior  
7 manager. He's in this region. This is his  
8 kind of home region.

9 Q. And remind me where your home  
10 base is?

11 A. So our headquarters is  
12 Washington, Pennsylvania.

13 Q. Which is how far from East  
14 Palestine?

15 A. Roughly an hour, an hour and  
16 15 minutes.

17 Q. What specifically did  
18 Mr. Deutsch tell you when he called?

19 A. I didn't write it down word for  
20 word, but the general is -- was to say, we  
21 have a derailment involving fire, multiple  
22 tank cars. Start getting your guys together  
23 and, you know, bring some firefighting  
24 capabilities, HAZMAT response trailer. And  
25 that was kind of the initial information's



1 developing kind of dispatch.

2 Q. So you hang up the phone with  
3 Mr. Deutsch.

4 What do you do next?

5 A. So I start dispatching our  
6 personnel. In this case, Ryan Tokarski was  
7 one of my senior managers who lives between  
8 my house and East Palestine, so I sent him  
9 straight to the site.

10 I live approximately 11 miles  
11 from my shop. So I went to my shop, grabbed  
12 a trailer, at least grabbed some -- to show  
13 up with some resources for plugging,  
14 patching, diking, damming, one of our general  
15 response trailers.

16 And other people were  
17 dispatched out from SPSI, and they were  
18 following up with firefighting assets and  
19 other stuff, so...

20 Q. Ryan Tokarski was the first  
21 SPSI employee to arrive in East Palestine?

22 A. Yes.

23 Q. Do you know how much -- how  
24 soon before you got there he arrived?

25 A. Best memory, 30 minutes to hour

1 at the most.

2 Q. When you arrived in East  
3 Palestine, what's the first thing you did?

4 A. Found Ryan and found Scott  
5 Deutsch.

6 Q. Did they -- did you have a  
7 discussion with Mr. Tokarski and Mr. Deutsch  
8 at that time?

9 A. Yes. We were trying to find  
10 the commanders, whoever in charge at the fire  
11 department.

12 Q. Were you able to find them?

13 A. After a lot of searching, yes.

14 Q. And was it Chief Drabick or  
15 someone else you were -- you were seeking  
16 out?

17 A. No, I guess that actually may  
18 show up in my transcript in February. I  
19 thought at the time it would have been Chief  
20 Dra -- I found out after, Chief Drabick  
21 wasn't there for the first day and a half or  
22 something.

23 But one of his staff or one of  
24 his command staff was who we ultimately met  
25 with, and I didn't get his name. I just --

1     you know.

2                     NTSB inquired about that on --  
3     on that February thing, and I hadn't realized  
4     that the chief wasn't there for the first  
5     day, day and a half or whatever, but...

6             Q.       So you show up in East  
7     Palestine. You have a meeting with  
8     Mr. Tokarski and Mr. Deutsch.

9                     You set out to find the fire  
10    chief, and you have a discussion with one of  
11    Chief Drabick's personnel.

12                    Is that accurate?

13             A.       Yes.

14             Q.       What was that first discussion  
15    you had with the fire department?

16             A.       Concerned that they had a lot  
17    of people deployed in what was going to be a  
18    futile effort and putting a lot of people at  
19    risk.

20             Q.       All right. And when you say "a  
21    lot of people deployed," do you mean a lot of  
22    firefighters who were involved in trying to  
23    put out the pool fires?

24             A.       Yeah, they were -- they were  
25    throwing water literally everywhere. They

1     were throwing water south, east, from the  
2     north to -- from south to north, from north  
3     to south. They had several operations going  
4     on.

5             Q.       All right. You said it was  
6     going to be futile.

7                     What's your basis for that?

8             A.       So, massive amount of fire. A  
9     massive amount of unknowns in the derailment  
10    at that time. Couldn't really -- our  
11    struggle that whole night was getting car  
12    numbers compared to products to compare what  
13    was actually -- you know, the status of  
14    everything.

15                    One of our early challenges was  
16    get to status of every tank car, status of  
17    repair. And that was inherently difficult on  
18    this particular derailment.

19             Q.       You say it was futile.

20                    How did you know at the time  
21    that the effort was, as you say, futile, if  
22    you didn't know what the products were that  
23    were burning or anything else?

24             A.       That's where the 35 years'  
25    HAZMAT experience comes on, even more than

1 that in the fire service.

2 We were told early on that --  
3 we were asking why the tanker shuttles. You  
4 guys don't have hydrants. They said, yeah,  
5 we broke a city water line. So they didn't  
6 have a reliable water source.

7 The sheer gallons-per-minute  
8 flow that they were attempting to sustain  
9 wasn't going to be enough to put out the  
10 fires that they had. They had a ton of  
11 three-dimensional fires at that time.

12 They didn't even understand  
13 what they were trying to extinguish. You  
14 can't extinguish fires when you don't  
15 understand what's burning.

16 Q. Was it your recommendation that  
17 all firefighting personnel evacuate the  
18 scene?

19 A. That -- yeah, that was -- Scott  
20 Deutsch and Ryan Tokarski and I were on the  
21 same page with that. We suggested they back  
22 up.

23 Q. And one of the reasons for that  
24 was your concern for their safety?

25 A. Absolutely.

1           Q.       So you have a meeting with  
2   the -- with somebody from the fire  
3   department. You can't recall a name right  
4   now.

5                    You advise that person that in  
6   your view, the pool fire scene should be  
7   cleared of personnel.

8                    Is that right?

9           A.       Yes.

10          Q.       What happened next?

11          A.       They rewound their operations.  
12   They got everybody cleared up.

13                   And as they were doing that,  
14   Ryan Tokarski and I did the best we could as  
15   they were clearing up to get a look at  
16   whatever we could get a look at.

17                   And right about the time the  
18   firemen were truly cleared up, the first PRD  
19   was going off.

20          Q.       So the first -- remind me of  
21   the timing of the first PRD going off, as  
22   best you can recall.

23          A.       I think it was somewhere  
24   between 11 p.m. and 1 a.m.

25          Q.       On the --

1 A. Of the Friday night.

2 Q. 11 p.m. on the 3rd or 1 a.m. on  
3 the 4th?

4 A. Yes.

5 Q. All right. And at that point,  
6 your recollection is that the -- is that all  
7 fire personnel were cleared from the pool  
8 fire site?

9 A. Yes.

10 Q. Did you walk the derailment  
11 line, observe any cars that evening sometime  
12 between the 3rd and the morning of the 4th?

13 A. It was limited. Ryan and I  
14 were obviously concerned for our own safety  
15 as well. We were limited to the walk on  
16 the -- we were in the south side from the  
17 west to east from the southwest corner of  
18 CeramFab.

19 Q. You mentioned Mr. Tokarski, and  
20 then you said "other employees."

21 How many SPSI employees  
22 ultimately deployed to East Palestine between  
23 the 3rd and the 6th?

24 A. I'd have to go back to notes.  
25 I don't remember that number on my memory.

1           Q.       Can you give me even an  
2 estimate? Was it a dozen? Two dozen? Half  
3 dozen?

4           A.       It could have been a dozen.  
5 Maybe more.

6           Q.       All right. Who do you recall  
7 other than Mr. Tokarski?

8           A.       Well, let's see here. You  
9 mentioned Greg Palmer earlier, night shift  
10 safety.

11                   D'Shawn Herrera. Excuse me, he  
12 would have been night shift.

13                   Again, I'm sorry, it's been a  
14 year ago. I'd have to go back to notes. I'm  
15 sorry.

16           Q.       No apologies. Just looking for  
17 your best recollection.

18           A.       Yeah.

19           Q.       That's all I can get.

20                   Of the folks you can recall  
21 from SPSI who were on the scene, did you  
22 consider any to be -- have expertise in  
23 stabilized VCM?

24           A.       None of them are chemists  
25 either. I'm going to go back to my -- none



1 of us are chemists, so I'm going to say no to  
2 that.

3 Q. So you've talked about your  
4 experience with VCM. Nobody on the SPSI team  
5 had some other experience, greater  
6 experience, chemistry experience, that you  
7 didn't possess.

8 Fair?

9 A. Fair.

10 Q. Had any of the SPSI folks who  
11 came to the site in East Palestine ever been  
12 involved in a vent and burn operation of cars  
13 that had derailed in a town?

14 A. Greg Palmer, our night shift  
15 safety guy, I had him take the lead in burn  
16 pit prep because he had actively participated  
17 in his career with some vent and burn  
18 operations as well.

19 Q. And we're going to return to  
20 this.

21 Tell me what you mean by "burn  
22 pit prep."

23 A. So, containment. Part of the  
24 vent and burn process. It's an emergency  
25 de-inventorying tactic. And you don't just

1 open up the cars and let the stuff run where  
2 it wants to run. You know, we want to  
3 contain it. We want to trap it.

4 And, you know, we do that  
5 through purposefully building and  
6 manipulating burn pits that will hold that  
7 capacity of that material.

8 Q. So when you do a vent and burn,  
9 you have some ability to control where the  
10 fire occurs.

11 Is that fair?

12 A. That's fair.

13 Q. You said that Mr. Palmer had  
14 been involved in vent and burns previously.  
15 The question I asked was a little bit more  
16 specific.

17 Did he have any experience  
18 conducting a vent and burn of cars that had  
19 derailed in a town?

20 A. I don't know where his exact  
21 experiences were. I'm sorry, I can't refer  
22 to that.

23 Q. All right. And you had never  
24 been involved in a vent and burn that  
25 occurred in a town.

1 Correct?

2 A. No, I was. Downtown Flint,  
3 Michigan, back in January 2000.

4 Q. Tell me about that derailment.

5 A. So it actually wasn't a  
6 derailment. That was actually considered a  
7 non-accident release situation in which a --  
8 I don't mean to chuckle at that, but as I  
9 think about it, it was a PRD failure in that  
10 case, the pressure relief device on a propane  
11 car. And the ultimate root cause had a  
12 broken spring.

13 It was release -- excuse me.  
14 Losing my voice again. Sorry.

15 The PRD was relieving at a much  
16 lower set to discharge -- it was relieving  
17 much too early. It was relieving underneath  
18 of the car's normal working pressure. It was  
19 just leaking propane, basically. It had an  
20 active propane leak because the PRD was  
21 lifting in normal transportation.

22 And it found a propane switch  
23 heater. The vapors of propane are heavier  
24 than air. Found a switch heater on the  
25 railroad, and this car of propane rolled into

1     downtown Flint, Michigan, rail yard on fire  
2     from the protective housing.

3             Q.       And on that car in Flint,  
4     Michigan, in 2000, you conducted a vent and  
5     burn?

6             A.       Yes, we did.

7             Q.       Exactly as what occurred in  
8     East Palestine?

9             A.       Yes.

10            Q.       Two charges on the car, burn  
11     pit was dug, et cetera?

12            A.       Yes.

13                    Well, we didn't actually dig a  
14     hole in that case because it was in the  
15     middle of a rail yard. We actually brought  
16     in several truckloads of dirt and built an  
17     aboveground moat, if you will, aboveground  
18     dam and dike around the entire tank car and  
19     made sure it had capacity and everything.

20            Q.       How close was that rail yard to  
21     any residential areas?

22            A.       Pretty close. It had a  
23     propane -- one of those -- kind of like a  
24     regional propane distribution place across  
25     the street. They had a tire recycling place

1 across the fence line. There was houses --  
2 there was houses, recyclers, propane, rail  
3 yard. There was a lot of exposures.

4 Q. Is that the only vent and burn  
5 that you've participated in that took place  
6 in a town?

7 A. Myself, yes.

8 Q. Before East Palestine?

9 A. Yes.

10 Q. And as best you know, anyone on  
11 your team?

12 A. Yeah, other than Greg Palmer,  
13 I'm confident to say that none of our other  
14 SPSI guys would have been privy to that.

15 Q. When the -- you talked about  
16 the firefighters being cleared from the pool  
17 fires.

18 When they were cleared, were  
19 other efforts made to try to put out,  
20 extinguish, the pool fires?

21 A. No, not until -- we didn't do  
22 any real fire suppression until wreck  
23 clearing operations following the vent and  
24 burn.

25 Q. I don't have experience in

1 firefighting, but I understand from reading  
2 other testimony that there were unmanned  
3 monitors that were on the ground in East  
4 Palestine on February 3rd or 4th.

5 Is that true?

6 A. There might have been a couple  
7 from the fire department. I'm not sure how  
8 many they had deployed.

9 Q. Tell us what an unmanned  
10 monitor is.

11 A. So they're portable, and you  
12 kind of -- one or two people wrestle them in  
13 a position, stake them into the ground so  
14 they don't kind of jump and rock and slide.  
15 It takes people to deploy them, set them up,  
16 establish flow, establish a direction of your  
17 water that you want to flow it at, and then  
18 you walk away from it.

19 As long as the water flow  
20 sustains, it keeps flowing water.

21 Q. At any time when you were in  
22 East Palestine, did you or anyone else train  
23 unmanned monitors on the pool fires to try to  
24 extinguish them more quickly?

25 A. No.

1           Q.       All right. Were unmanned  
2 monitors -- you said they were used in East  
3 Palestine?

4           A.       I don't know if the firemen had  
5 them out or not.

6           Q.       You don't recall ever  
7 witnessing unmanned monitors being used to  
8 fight fires in any way in East Palestine?

9           A.       I just don't recall. If they  
10 had any, I don't remember tripping over them.  
11 But they had a lot of operations going on.

12          Q.       The pool fires ultimately  
13 extinguished on their own.

14                   Correct?

15          A.       That's right.

16          Q.       Do you recall the time?  
17 Generally the day and time?

18          A.       We observed -- they burned out,  
19 for the most part. But I'll say the majority  
20 of pool fires seemed to die out, like, after  
21 lunch-ish on Saturday.

22          Q.       How long after they died out  
23 then was the extended release from  
24 the Car 28?

25          A.       Somewhere in the vicinity of

1 three to five hours.

2 Q. Can you give me -- so there  
3 were -- there were four VCM cars that were  
4 subject to the pool fires continually.

5 Right?

6 A. Correct.

7 Q. How long --

8 A. Wait. You say three or four?

9 Q. I said four.

10 A. Yeah, that's correct.

11 Q. All right. How long were those  
12 cars subjected to pool fires?

13 A. From Friday night well into,  
14 like I say, through midday Saturday.

15 Q. More than 12 hours?

16 A. Yes.

17 Q. Continual fire?

18 A. Yes.

19 Q. Okay. I want to ask you now,  
20 return to the Trinity VCM car and what was  
21 done with it, what was considered to be done  
22 with it, et cetera.

23 And to guide me through that,  
24 I'd like, if you can, please, to pull back  
25 out Exhibit 14.



1                   While you're doing that,  
2     Exhibit 14 is the PowerPoint presentation  
3     that was prepared for your appearance before  
4     the Senate Commerce Committee in March  
5     of 2023.

6           A.       Okay.

7           Q.       Just let me know when you have  
8     that in front of you.

9           A.       Yes. Got it.

10          Q.       And you've talked a bit about  
11     this in response to some earlier questions.  
12     I'm not going to go back through all of that.

13                   I would, if you could, please,  
14     like you to turn to the number on the lower  
15     right-hand corner that ends in 193.

16          A.       Okay.

17          Q.       Okay. You testified earlier  
18     today about a call that you had with the Oxy  
19     folks in Dallas.

20                   Do you recall that?

21          A.       There was a couple calls.

22          Q.       Okay. You had discussions with  
23     the folks in Dallas where one or more of them  
24     told you that based on the evidence that you  
25     presented to them, polymerization was not

1 occurring.

2 Right?

3 A. There was somebody in Dallas  
4 that just didn't think it was happening.

5 Q. And you said in response to a  
6 question that when they said that, they  
7 didn't give you any options.

8 Remember saying that?

9 A. Oh, yeah.

10 Q. Okay. What I'm looking at here  
11 on -- the slide that ends in 193 is a slide  
12 titled "Tactical Options for Tank Cars."

13 Do you see that?

14 A. Yes.

15 Q. And this is a slide that you  
16 put together.

17 Correct?

18 A. Yes.

19 Q. These are listing options for  
20 tank cars that have derailed, and you or  
21 other HAZMAT folks need to make a decision  
22 about what to do with them.

23 Right?

24 A. Yes.

25 Q. And so when you say, well, Oxy

1 didn't give us options, you knew what our  
2 options were, how to handle cars that might  
3 or might not be polymerizing.

4 Right?

5 A. We had talked through these  
6 options and explained why we weren't  
7 comfortable hot-tapping, so those options  
8 were considered.

9 Q. Okay. So what I want to do is  
10 I want to focus these options on the Trinity  
11 VCM car, which as you've acknowledged was  
12 differently situated than the others.

13 Okay?

14 A. Okay.

15 Q. So the first option that -- and  
16 by the way, let me take a step back and ask  
17 you about how this document came together.

18 Did you create the slide that  
19 ends in 193 personally?

20 A. Yes, I did.

21 Q. This is based on your  
22 experience in train derailments?

23 A. Yes.

24 Q. Based on any literature you  
25 might have read?

1 A. Yes.

2 Q. All right. Based on  
3 presentations you've previously given?

4 A. Yes.

5 Q. Based on other derailments that  
6 you've worked at?

7 A. Yes.

8 Q. Okay. And is this a slide, a  
9 193 slide, that you present to The Chlorine  
10 Institute, for instance?

11 A. No, this was a very specific --  
12 this was developed for that Senate  
13 subcommittee.

14 Q. Okay. So when you look at the  
15 tactical options for tank cars that are  
16 listed, are these specific to the East  
17 Palestine derailment or did they apply to  
18 other derailments?

19 A. Oh, no, this is -- I mean, this  
20 could be presented in any given training  
21 class, if that's --

22 Q. Understood.

23 A. So, no, it wasn't specific for  
24 East Palestine.

25 Q. Okay. According to SPSI, this

1 is the book on the options that you have for  
2 tank cars in a derailment.

3 Correct?

4 A. Yes.

5 Q. All right. And it's important  
6 that you treat every tank car in a derailment  
7 individually and assess them individually.

8 Right?

9 A. Yes.

10 Q. Vent and burn being what you've  
11 called the last option, you just don't go out  
12 and willy-nilly vent and burn every tank car  
13 that derails.

14 Right?

15 A. Correct.

16 Q. It's a serious thing to do?

17 A. Correct.

18 Q. All right. So looking at the  
19 initial tactical option for tank cars, it  
20 says, "Do nothing."

21 Right?

22 A. Uh-huh.

23 Q. "Negligible damages, no leaks,  
24 et cetera, move or re-rail the car."

25 That's option -- tactical

1 option number 1 for tank cars.

2 Right?

3 A. Yes.

4 Q. All right. And when it comes  
5 to the -- let me ask you first.

6 It says, "Move or re-rail the  
7 car."

8 Those are two separate things.

9 Right?

10 A. Yes.

11 Q. Re-railing the car is putting  
12 it back on the tracks, sending it along its  
13 way or moving it out of harm's way.

14 Right?

15 A. Yes.

16 Q. Moving the car is taking it and  
17 moving it out of harm's way, be it out of  
18 fire's way or something else.

19 Right?

20 A. Yes.

21 Q. And both of those options  
22 require heavy equipment to do it?

23 A. Yes.

24 Q. All right.

25 A. And people.

1           Q.       For at least a time, that  
2       was -- that was how Norfolk Southern and its  
3       contractors, including SPSI, elected to deal  
4       with the Trinity VCM car.

5                       Correct?

6           A.       What was the question?

7           Q.       That is -- so looking at  
8       tactical option 1, do nothing, move or  
9       re-rail car, that's an option that Norfolk  
10      Southern and you were considering for the  
11      Trinity VCM car.

12                     Right?

13          A.       Yes.

14          Q.       All right. You talked a bit  
15      about the different wrecking crews that were  
16      on-site in East Palestine.

17                     Right?

18          A.       I think so, yes.

19          Q.       Yeah.

20                     Do you -- do you -- and maybe  
21      you didn't. Maybe it's in my head, but let's  
22      do it now.

23                     All right. How many wrecking  
24      crews were called to the scene in East  
25      Palestine to help with the derailment

1 response?

2 A. I recall at least two. I know  
3 Hulcher and Corman were there. I can't  
4 remember. I think -- well, three.  
5 Cranemasters was also there.

6 Q. So Hulcher, Cranemasters and  
7 who was the third?

8 A. R.J. Corman.

9 Q. R.J. Corman.

10 Okay. All right. And they're  
11 called wrecking crews. That was sort of a  
12 new term to me.

13 One thing that they can do in a  
14 derailment site is they can move cars from  
15 one location to another if necessary.

16 True?

17 A. True.

18 Q. All right. Was one of those  
19 three specifically responsible for dealing  
20 with the tank cars to the extent they could  
21 be dealt with?

22 A. That would have fallen under NS  
23 mechanical department, not us.

24 Q. So let me take a step back to  
25 make sure I understand this.



1                   Was it Norfolk Southern, you're  
2   saying, who was responsible for calling the  
3   professional wreckers in to help in East  
4   Palestine?

5           A.       Yes.

6           Q.       All right. Did you have any  
7   communications with any of the professional  
8   wreckers about coming to East Palestine to  
9   help?

10          A.       No, I did not.

11          Q.       All right. When, to the best  
12   of your recollection, did any of the  
13   professional wreckers arrive in East  
14   Palestine?

15          A.       I don't know.

16          Q.       You've testified that you've  
17   participated in a lot of derailments.

18                   Is it normal to have three  
19   separate wrecking crews on-site for a train  
20   derailment?

21                   MR. LEVINE: Objection.

22                   THE WITNESS: No, it is typical  
23   in a wreck of that size, yes.

24   QUESTIONS BY MR. SWANSON:

25          Q.       So you didn't think it unusual

1 to have three separate wrecking crews  
2 on-site?

3 A. No.

4 Q. And I'm sorry if you said this  
5 a minute ago.

6 You don't know if one of those  
7 three was specifically responsible for the  
8 VCM cars?

9 A. No, I don't know.

10 Q. Who was it who was in charge of  
11 giving direction to the professional wreckers  
12 once they were on-site in East Palestine?

13 A. So that always falls under the  
14 mechanical department. As far as which  
15 mechanical person was giving the guidance, I  
16 don't know.

17 Q. Can you tell me who from  
18 Norfolk Southern was a member of the -- what  
19 you call NS mechanical?

20 A. The Pittsburgh area fellow is  
21 Josiah Saxe, and I don't know how to spell  
22 his name. I'm sorry. But...

23 Q. Okay. Okay. So I'm going to  
24 ask you about re-railing the car, but moving  
25 a tank car involves different equipment than

1 re-railing a tank car.

2 Is that accurate?

3 A. Not necessarily.

4 Q. The same equipment can be used  
5 to do either?

6 A. Sometimes.

7 Q. What equipment is that?

8 A. Well, side booms are popular.  
9 In the case of Cranemasters, they have what  
10 they call Mantis cranes. They're a walking  
11 crane. Different capacities, different  
12 sizes. I don't know what they had on-site,  
13 but -- so there is a couple of different  
14 tools that have been used for that.

15 Q. But to move a loaded tank car,  
16 you need equipment that's capable of moving  
17 250,000 pounds or more.

18 Is that accurate?

19 A. In that case, my experience  
20 would be four side booms and, again, not to  
21 overlook the people. It -- the people is  
22 significant.

23 Q. So just focusing on the  
24 equipment that was on-site, that you saw  
25 on-site in East Palestine, was there -- was

1     there sufficient equipment, appropriate  
2     equipment, to move the Trinity VCM car at any  
3     point between February 3rd and February 6th?

4     Just was there sufficient equipment?

5             A.       Yes.

6             Q.       And what equipment could have  
7     been used to move the Trinity car?

8             A.       I'm not a mechanical, but I'm  
9     experienced enough to know it would have  
10    taken four side booms, or a combination of  
11    multiple side booms and a walking crane. It  
12    could have been anywhere from four to five  
13    pieces of equipment.

14            Q.       And if you have the right  
15    equipment, which you said right equipment  
16    exists in East Palestine, to move a tank car,  
17    that can be accomplished in one to two hours.

18                    Is it fair to say?

19            A.       No.

20            Q.       How long does it take?

21            A.       The perspective I think when  
22    wreck clearing gets started, once the  
23    momentum is going and they're clearing a  
24    wreck, that's a decent estimate.

25                    But to get set up, get

1     deployed, get in there, get access, rig it,  
2     move it, that can go anywhere from one to  
3     four hours.

4             Q.       So Trinity's VCM car, you  
5     were -- you and your team were in, stuck the  
6     pressure gauge on that car, on Saturday  
7     afternoon.

8                     Right?

9             A.       Yes.

10            Q.       And you saw that it was -- the  
11     pressure was normal. The VCM was stable.

12                     Right?

13            A.       Yes.

14            Q.       Did you then tell any of the --  
15     did anybody then tell any of the wrecking --  
16     professional wreckers to get their equipment  
17     over there and move this thing out of the  
18     way?

19            A.       I don't believe so, no.

20            Q.       Why not?

21            A.       We were trying to keep  
22     everybody out of that hot zone for their  
23     safety.

24            Q.       Well, the fires had  
25     extinguished. The pool fires had

1 extinguished.

2 Right?

3 A. They had burned down. That's  
4 why we were in there.

5 Q. Right.

6 A. But the moment that we bugged  
7 out, after that third car in did what it did,  
8 we wanted no operations in that area.

9 Q. So you -- was anybody  
10 physically present in that -- in the site of  
11 the pool fires after the extended venting for  
12 more than an hour?

13 A. Inevitably --

14 MR. LEVINE: Objection.

15 THE WITNESS: Inevitably, SPSI  
16 had to put personnel in there to build  
17 berms, and the ESI fellows had to set  
18 their charges. So we had to do  
19 certain tasks as a getting ready for  
20 the vent and burn.

21 But we absolutely limited the  
22 amount of people in there to the bare  
23 minimum and minimized our exposure  
24 risks of those activities.

25

1 QUESTIONS BY MR. SWANSON:

2 Q. How long -- when you talk about  
3 preparing for the vent and burn, how long,  
4 continuously, were the folks at ESI on the  
5 site, on the cars, in that area that you had  
6 evacuated?

7 A. I'm estimating maybe two to  
8 three hours.

9 Q. How about you and your team in  
10 preparing for the vent and burn operations?  
11 How long continually were you in that area  
12 that you had evacuated?

13 A. We had two people in there with  
14 them doing the berms while they were doing  
15 their charges. I had one guy at night on a  
16 track hoe. He would have been a couple  
17 hours. So no more than a couple hours per  
18 person.

19 Q. Okay. So you had folks who you  
20 exposed to this area for two to three hours  
21 in order to vent and burn.

22 Right?

23 A. Yes.

24 Q. All right. You didn't ask any  
25 of the professional wreckers to go in and try

1 to move Trinity's VCM car, movement that  
2 could have occurred, according to you, in one  
3 to four hours?

4 MR. HANSON: Objection.

5 THE WITNESS: Yeah, that was  
6 not my call. And part of that was,  
7 you know, this whole phenomenon  
8 like -- just no unnecessary personnel  
9 to be operating in there was a -- was  
10 a -- kind of a -- again, I wasn't --  
11 don't think I was -- you know.

12 Every time we walked into that  
13 hot zone, I'll just say pretty much  
14 most of my employees acknowledged they  
15 were pucker-factored, and they wanted  
16 to minimize their time in there and  
17 get out. So this is not a site where  
18 everybody's comfortable getting in  
19 there and working.

20 So I can't speak for Norfolk  
21 Southern's mechanical. I can't speak  
22 for their contractors. That's a  
23 factor in this equation.

24 QUESTIONS BY MR. SWANSON:

25 Q. And that's a factor in any



1 derailment, I would imagine.

2 Isn't it, sir?

3 A. Yes.

4 Q. All right. And I think you  
5 called them non -- no unnecessary personnel.

6 You agree with me, I think,  
7 that it would have been preferable to move  
8 Trinity's VCM car rather than venting and  
9 burning that car and sending all of its  
10 contents into the environment.

11 Right?

12 MR. LEVINE: Objection.

13 THE WITNESS: As I had  
14 testified, I -- there was a time where  
15 myself and even a couple of the  
16 Norfolk Southern guys, we were  
17 considering getting that car out of  
18 there.

19 And after mechanical had looked  
20 at it and evaluated what it was going  
21 to take to move it, mechanical made  
22 the decision not to put people in  
23 there.

24 QUESTIONS BY MR. SWANSON:

25 Q. So when you say "mechanical,"

1 then you're again referring to Norfolk  
2 Southern?

3 A. Norfolk Southern mechanical and  
4 Chip Day, who did that assessment on that  
5 particular car. I don't know the details  
6 because I didn't do it.

7 Q. So that's a question for  
8 Mr. Day, in your view?

9 A. It's really a question for  
10 Norfolk Southern mechanical, in my view.

11 Q. Do you have -- as you sit here  
12 today, do you know what reason was given for  
13 the inability to move the Trinity VCM car?

14 MR. LEVINE: Objection.

15 THE WITNESS: I got rough  
16 memory of they couldn't re-rail it,  
17 and they didn't want to put people in  
18 for extended period of time to move  
19 it, drag it, set it far away.

20 I mean, just general  
21 conversation, but I don't know  
22 specifics.

23 QUESTIONS BY MR. SWANSON:

24 Q. Do you know if Mr. Day or NS  
25 mechanical ever told the professional

1 wreckers that the VCM in Trinity's VCM car  
2 was stable and not polymerizing?

3 A. I don't know.

4 Q. And I think you said sitting  
5 here today, you can't tell me what individual  
6 was responsible for giving direction to the  
7 wreckers?

8 A. I don't know.

9 Q. And do you know if the wreckers  
10 were doing their own assessment of the cars  
11 or whether they were relying on information  
12 from NS and others?

13 A. I don't know.

14 Q. But what you do know is  
15 ultimately there was a decision, whoever made  
16 it, that the Trinity car could not be moved  
17 or re-railed.

18 Is that right?

19 A. That's correct.

20 Q. I've seen some testimony or  
21 documents that talk about a damaged bolster  
22 on Trinity's VCM car.

23 Do you have any recollection of  
24 hearing about a damaged bolster?

25 A. Not specifically, but that

1 would track with -- if they didn't think they  
2 could re-rail it, that would make sense.

3 Q. Did you ever lay eyes on the  
4 bolster of that car?

5 A. I did not.

6 Q. So you don't know one way or  
7 the other whether the bolster was damaged?

8 A. I don't know.

9 Q. Okay. So going back to  
10 Exhibit 14 and slide 193, the next option is,  
11 "Do nothing. Let fires burn out from safe  
12 distance until car's status can be verified,"  
13 et cetera.

14 Do you see that?

15 A. Yes.

16 Q. What's the difference there  
17 between the first "do nothing" option?

18 A. So this reflects let fires burn  
19 out. And in fact it's, what'd I say, let  
20 Mother Nature take its course. Let  
21 thermodynamics of tank car packages and  
22 fires -- if something's going to blow up, let  
23 it blow up. Don't put any person at risk  
24 trying to be a hero.

25 The first operating period --

1 the general approach to all HAZMAT  
2 derailments is in the first operating period,  
3 when you have a mixed freight train and such  
4 dynamics, the safest course of action is to  
5 keep people back, evaluate what you have.  
6 That's this message here. Keep people back.  
7 Evaluate what you have until car statuses can  
8 be verified.

9 Those are the kinds of things  
10 we try to do with drones and with the state  
11 police flyover. Those were kinds of things  
12 we were trying to do with that entry  
13 operation on Saturday, trying to gather these  
14 data. That was all that work in progress  
15 through the night Friday into Saturday. That  
16 kind of fits into that second bullet point.

17 Q. And if the folks at Oxy were  
18 right and polymerization was not occurring,  
19 that would have been an option that you could  
20 consider.

21 Right?

22 A. Well, that was on your car.  
23 That was pretty much what happened. The pool  
24 fire that had been under your car early, it  
25 burned itself out before we got there.

1 That's a good example of the Trinity car  
2 fitting into that category.

3 Q. Okay. All right. Bullet  
4 number 3, "Transfer product from car. Due to  
5 leak or other critical damage, need to  
6 lighten the package for wreck clearing or for  
7 other environmental concern such as spill  
8 prevention."

9 Did I read that correctly?

10 A. Yes.

11 Q. Describe for me how that works,  
12 because -- and the reason I ask is because  
13 there are some other product transfer methods  
14 that are below it.

15 So what's meant by "transfer  
16 product from car" in bullet 3?

17 A. Sure. So say a tank car is  
18 damaged and can't continue on in  
19 transportation. The product in the car is  
20 okay. It needs to move on to destination.  
21 You have to transfer it into a good package.

22 So that would be an example of  
23 that.

24 Q. Okay. Is that something that  
25 you have done in other derailments that you

1 have been a part of?

2 A. Yes.

3 Q. Now, for the -- for the Trinity  
4 VCM car, as you've testified about, you were  
5 able to attach a pressure gauge to an angle  
6 valve that was functioning.

7 Right?

8 A. Yes.

9 Q. And you know, I think, that an  
10 angle valve is used to unload and offload  
11 product from the tank car.

12 Correct?

13 A. Yes. And we put on a vapor  
14 line. That would be part of the unloading  
15 system, yes.

16 Q. Okay. So one option that  
17 exists in a train derailment is putting a  
18 vapor line onto a valve, like an angle valve,  
19 and unloading product.

20 Correct?

21 A. Well, the vapor line wouldn't  
22 remove the liquid product, but we would -- in  
23 a transfer tactics of vinyl chloride, it  
24 would receive the discharge pressure from a  
25 cork and vapor compressor and essentially add

1 pressure to that car to push liquid out of  
2 it. That would be the transfer technique  
3 using that vapor line.

4 Q. Okay. So for Trinity's VCM  
5 car, you have a stable product that's not  
6 polymerizing.

7 Correct?

8 A. We didn't have that suspicion,  
9 no. We thought it was okay.

10 Q. And you had a functioning angle  
11 valve that's used to onload and offload  
12 product from the car.

13 Correct?

14 A. Well, that particular valve, it  
15 was a vapor valve, just for clarity. We  
16 don't move liquid out of that valve. It  
17 would be the vapor valve.

18 Q. Is it impossible to move liquid  
19 out of that valve?

20 A. Actually, it would be, because  
21 it -- but anyway, but it's -- go ahead, I'll  
22 follow you.

23 Q. What's that?

24 A. You're next. I'm just -- we  
25 couldn't get liquid out of the valve.



1           Q.       You couldn't get liquid out of  
2     the angle valve?

3           A.       No.

4           Q.       Did you evaluate other valves  
5     on Trinity's VCM car to see if they were  
6     functioning?

7           A.       We did not. We never cycled or  
8     checked all those liquid line valves. We  
9     didn't want to touch them, we didn't want to  
10    open them, because they had had a fire around  
11    them at one point.

12          Q.       Well, they'd had a fire around  
13    them that had extinguished by the time you  
14    first saw the car on Saturday the 4th, right?

15          A.       Well, my guys were on -- on the  
16    5th put a pressure gauge on it.

17          Q.       Okay. So the 5th it was -- you  
18    were able to access --

19          A.       I'm sorry, the 4th.

20          Q.       The 4th. Excuse me.

21                    On the 4th, you put a pressure  
22    gauge on the angle valve of Trinity's VCM  
23    car.

24                    Correct?

25          A.       My guys did, yes.

1           Q.       Okay. And your testimony is  
2     that your guys didn't look at any of the  
3     other valves on that Trinity car to see if  
4     they were functioning and could be used to  
5     offload product.

6                   Is that your testimony?

7           A.       We didn't purposely open any  
8     valves.

9           Q.       So you don't know whether there  
10    were valves that could have been used to  
11    offload product from Trinity's VCM car  
12    because that's not something that you or your  
13    team checked.

14                  Correct?

15          A.       At that entry, putting the  
16    pressure gauge on the car on Saturday  
17    afternoon, that was not part of the crew's  
18    assignments.

19                  And the reason that it wasn't,  
20    if we would have opened a valve, and if it  
21    would have had a leak from heat damage, for  
22    example, we may or may not have been able to  
23    get the valve closed again had it been  
24    heat-damaged from whatever pool fire had been  
25    under it early.

1                   They were limited to a vapor  
2   valve to put a gauge on it, and that's  
3   something that's a relative risk.

4                   If we have a small leak from  
5   some packing stem packing, it's a manageable  
6   leak and a small release.

7                   If you have a leak from a  
8   liquid valve, there's a 340-to-1 expansion  
9   ratio from liquid to vapor, so it can be an  
10   exponentially worse leak.

11                  So we purposely avoided  
12   tampering with those liquid line valves.

13                Q.       So then let me make sure I  
14   understand. In the slide 193, looking at the  
15   options, it goes from most preferable to  
16   least preferable.

17                   Right?

18                A.       Generally, yes.

19                Q.       Okay. So transfer product is  
20   pretty high up. If you can do it, let's do  
21   it.

22                   Right?

23                A.       In concept, yes, but I'm  
24   following you.

25                Q.       Okay. And that assessment was

1 not made for Trinity's car because of what  
2 you've just described as concerns you had for  
3 the liquid valves?

4 A. No, that's not true. It was  
5 considered.

6 Q. Okay. Tell me what discussions  
7 were had and what I can learn about those.

8 MR. LEVINE: Objection.

9 THE WITNESS: Okay. So --

10 MR. SWANSON: What's the  
11 objection?

12 MR. LEVINE: So tell me what  
13 conversations were had and what I can  
14 learn about them?

15 MR. SWANSON: Yeah.

16 MR. LEVINE: You want him to  
17 tell you what you can learn about  
18 them? Seriously?

19 All right. It seems like a bit  
20 of an ambiguous, broad question.

21 THE WITNESS: Well, this is an  
22 example of Scott Deutsch, Scott Gould  
23 and Drew McCarty talking in our  
24 trailer after that PRD excursion on  
25 Saturday afternoon.

1 QUESTIONS BY MR. SWANSON:

2 Q. Okay.

3 A. So fundamentals of, you know,  
4 this car is upright, generally. It was  
5 generally upright, you know. There was known  
6 pressure in the car that seemed tracking with  
7 the favored pressure curve. So we did talk  
8 about this.

9 Access to or receiving tank  
10 car, you can't get there from here. You  
11 can't get an empty vinyl chloride car here  
12 anytime soon at risk of all the other cars.

13 The key factor in this, where  
14 I'm going with the conversation, is, all  
15 these other cars we were really afraid of.  
16 We were very concerned of these other cars,  
17 what their conditions really were.

18 This is a full-day operation of  
19 people, deployment, leak testing, transfer  
20 operations, and that's just tank car to tank  
21 car.

22 In the likelihood of getting  
23 tank car in the best good rail, non-broken  
24 rail, was several feet down the track, you  
25 know, just distance to get to transfer and

1 such. It would have been a major deployment.

2 We would have had to find a way  
3 to add inhibitor to the load, because even  
4 though it didn't show signs of  
5 polymerization, conservative measures -- back  
6 to the we don't want to accidentally put  
7 something that could polymerize due to other  
8 factors in the derailment from earlier heat.  
9 A lot of factors there, X factors.

10 Had we found a tank car in the  
11 region nearby, piped it several hundred feet  
12 down the tracks to good rail, set it all up,  
13 transferred it, added inhibitor to it, sent  
14 that car on its way and de-inventoried that  
15 car, it would have put a lot of people in the  
16 den of rattlesnakes for way too long.

17 That's the main reason it  
18 was -- and trucks were not an option.  
19 Somebody said, well, can't you just get  
20 trucks. Trucks in vinyl chloride service are  
21 not like a phone call away down the street in  
22 Pittsburgh. They're just -- any trucks for  
23 vinyl chloride would have been from Texas at  
24 probably the closest.

25 Q. When you say "trucks," you

1 mean --

2 A. Tank trucks.

3 Q. -- to accept the product?

4 A. Right.

5 Q. Okay.

6 A. So it boiled down to personnel  
7 working in the area where we had this car at  
8 5 p.m. Saturday just misbehave. And I'm not  
9 putting any personnel in that area for any  
10 extended period of time. That's the real  
11 answer why transfer was taken off the table.

12 Q. What about -- so there's  
13 pressure reduction is the next option.  
14 Venting, flaring, scrubbing.

15 What's that?

16 A. So pressure reduction from a  
17 tank car, some products you can vent to  
18 atmosphere. For example, carbon dioxide. A  
19 refrigerated car with an inert gas like  
20 nitrogen, argon, carbon dioxide, you can just  
21 vent those to the atmosphere. They're part  
22 of the atmosphere.

23 Flaring would be something like  
24 an LPG.

25 Scrubbing would be something

1     like chlorine.

2                     So things that can be  
3     managed -- vapor-pressure managed is what  
4     this is referring to.

5             Q.       Is liquid flaring an option for  
6     VCM cars?

7             A.       It tactically was a tool in the  
8     toolbox, yes.

9             Q.       And why was liquid flaring not  
10    conducted on Trinity's VCM car?

11            A.       For a similar process of  
12    thinking as the transfer from a number of  
13    personnel having the time, making -- putting  
14    people into what would have been a minimum of  
15    four operations on four different cars.

16                    It would have taken an extended  
17    amount of time to deploy. Welding involved,  
18    called hot work, basically welding under the  
19    cars, putting nipples on the cars. And we  
20    drill through the cars, is the process of  
21    hot-tapping.

22                    I feel like I lost my -- what  
23    was your question? I'm sorry. I'm getting  
24    tired at the end of the day. I'm sorry.

25            Q.       That's okay.



1                   Why was liquid flaring not  
2     conducted on Trinity's VCM car?

3           A.       Okay. So that -- okay. So we  
4     were having momentum towards that from what  
5     we were observing all night Friday night.

6                   And it was that third car in  
7     from the east that kind of stopped all  
8     aggressive work in that hot zone, and it had  
9     to do with putting a lot of people in harm's  
10    way.

11                   And part of the factors -- a  
12    lot of factors. Inch-and-a-quarter hole. If  
13    you're going to hot-tap, the hole is an  
14    inch-and-a-quarter diameter. And it's  
15    basically another de-inventorying tactic.

16                   And liquid flaring is  
17    essentially burning it off in a control burn  
18    pit.

19           Q.       Why is liquid flaring  
20    preferable to venting and burning?

21           A.       You can have valves. There's  
22    probably a few, you know -- there's -- you  
23    can -- you can close and open valves. You  
24    know, you can stop a flare. You can start a  
25    flare. So that's when you hot-tap and

1 install your own valves, you have a little  
2 more finesse controls. You can throttle big  
3 fire, little fire. You know, you can give  
4 fuel, strip back fuel.

5 That's probably the main  
6 reason.

7 Q. Would venting and burning  
8 Trinity's -- would hot -- would liquid  
9 flaring Trinity's VCM car have been  
10 preferable to venting and burning the car  
11 from an environmental perspective?

12 A. From an environmental  
13 perspective --

14 Q. Yeah.

15 A. -- no. No.

16 Q. Okay. Because it's -- the  
17 inventory is going to go into the  
18 environment, regardless --

19 A. Yeah.

20 Q. -- on fire?

21 A. The reality is, hot-tapping and  
22 liquid flaring, the same pounds of vinyl  
23 chloride would have been destroyed by fire.  
24 It had been -- it's another de-inventorying  
25 tactic.

1           Q.       Well, you know, hot-tapping,  
2   explain that to me, because I understood that  
3   as something different from just burning it  
4   off.

5           A.       So hot-tapping is gaining  
6   access to the product when things like the --  
7   a lot of photos you've seen where the valves  
8   and fittings are otherwise just trashed, and  
9   we can't use them.

10                   The process of hot-tapping is  
11   welding a nipple onto the lowest point in the  
12   car. That requires digging a pit, in this  
13   case a pit where hundreds of thousands of  
14   gallons of flammable, combustible liquids  
15   were still oozing and -- you know,  
16   environmental pollution at the site. We'd  
17   have been digging in and working in pits full  
18   of environmental issues.

19                   We would have had to strike  
20   arcs in still potentially flammable  
21   atmospheres, which is inherently dangerous,  
22   and you could light somebody up in a flash  
23   fire.

24                   There was someone on one of the  
25   calls talking about burn rates on PRD

1     excursions and had a theory that, hey,  
2     there's a chance some of these cars are  
3     already burned out, quote/unquote, so that  
4     was another X factor in the process.

5                     And as soon as we kind of  
6     realized, like, you know, if they think  
7     they've been burning this long and we might  
8     weld into a vapor space, that immediately  
9     takes hot-tapping off the table. You can  
10    never burn into a vapor space of any tank.

11            Q.     You could have hot-tapped  
12    Trinity's VCM car.

13                     Right?

14            A.     Yes. It was still loaded.

15            Q.     And why did you decide to --  
16    why was it -- why was the decision made to  
17    vent and burn that car rather than hot-tap  
18    it?

19            A.     For the same reason as the  
20    transfer. Just putting people into that area  
21    for work when all the other rattlesnakes were  
22    still sitting there.

23            Q.     Vent and burn is the last  
24    option on here.

25                     Why is it the last option?

1           A.       Well, there is no valves to  
2   open and close. You know, once you punch the  
3   holes, there's no turning back. I mean,  
4   there's -- it is a controlled process in  
5   terms of, you know, step 1, relieve vapor  
6   pressure in the car with explosive shape  
7   charge on -- or an explosive charge on the  
8   vapor space. And then step 2, de-inventory  
9   to the burn pits.

10                   So it's just -- it's just not  
11   something that the railroads or anybody else  
12   wants to just automatically put on the table.  
13   We're just -- that's -- we just want to  
14   exhaust all other options.

15           Q.       So if you could have -- if --  
16   in your view, if possible to vent and burn  
17   four cars versus five cars at East Palestine,  
18   that would have been preferable.

19                   Right?

20           A.       I would have liked to see us  
21   move that car, but once mechanical said they,  
22   you know, couldn't move it, wouldn't move it,  
23   whatever their decision was, I respected  
24   their decision, and I supported it.

25           Q.       Well, let me ask you about

1 that, because I think you said earlier that  
2 in a vent and burn operation you can control  
3 where the fire goes. That's why you have  
4 burn pits, et cetera.

5 Right?

6 A. Yeah, we definitely  
7 controlled -- I mean, we make sure that it  
8 doesn't get away from us.

9 Q. And what you knew from the  
10 Trinity car is that it had been a distance  
11 from the pool fires for a period of 12 to  
12 14 hours.

13 Right?

14 A. Different pool fires, but  
15 I'm -- go ahead, I'm following you.

16 Q. Yeah, so 12 to 14 hours.

17 Right?

18 A. Not a very far distance, but,  
19 yes.

20 Q. Yeah, not a very far distance.

21 And despite being exposed at  
22 not very far distance to those fires, it had  
23 stable product in it, and its pressure gauge  
24 was registering fine.

25 Right?

1 A. Yes.

2 Q. And the vent and burn fires  
3 don't last for 14 hours.

4 Do they?

5 A. No.

6 Q. So it is at least possible that  
7 rather than detonating Trinity's VCM car, you  
8 could have left it where it was. Preferable  
9 to moving. You could have left it where it  
10 was and vent and burned the other cars.

11 Correct?

12 A. No.

13 Q. Why?

14 A. Well, first I'll take the  
15 exception to the word "detonate." That was  
16 not a -- it was a controlled de-inventory.

17 That car was in way too close a  
18 proximity to what would have burned off  
19 approximately -- one full car, two half cars,  
20 probably the equivalent of two of the other  
21 full cars. No, it was much too close.

22 Q. Was there an analysis that was  
23 done?

24 I mean, as you've testified,  
25 the Trinity VCM car was in close proximity to

1 14 hours worth of -- 12, 14 hours worth of  
2 fires.

3 Right?

4 A. No. We've testified that it  
5 was far away from that. It was not -- that  
6 car -- the third -- 30th? What's the  
7 number -- 28th?

8 Q. 28th.

9 A. Your car was 28th.

10 The 29th car, if you look at  
11 your picture -- the burn pit that we were  
12 talking about was immediately north of 28.  
13 That's the best way to say this.

14 Where that -- where the burn  
15 pits were --

16 Q. You got to tell me what you're  
17 looking at here.

18 A. I'm sorry, Exhibit 6.

19 Q. Okay. Go ahead.

20 A. So cars, what is it, 29, 30,  
21 31, the burn pit was essentially the north  
22 ditch.

23 The space, if you look at  
24 the -- kind of a -- if 28 makes the right leg  
25 of a V and 29 makes the left leg of the V,



1 that was essentially the massive part of the  
2 burn pit for Cars 30 -- 31, 30 and 29.

3 And we extended the burn pit  
4 past Car 27 to the east in the ditch to the  
5 railroad. We utilized the railroad's natural  
6 topography to manage that burn.

7 Q. Okay. So the inability -- the  
8 inability to -- or the -- what you perceived  
9 to be the necessity to vent and burn  
10 Trinity's VCM car had to do with the location  
11 of the burn pit that was going to be dug to  
12 execute the vent and burn.

13 Correct?

14 A. Yeah. Topography and land gave  
15 us very limited option where we could put the  
16 burn pit. We had to put it where we had to  
17 put it.

18 Q. Okay. Thank you for that.

19 Tell you what. I'm going to  
20 bounce around a little bit now and just ask  
21 you a few questions that are going to seem  
22 unrelated, then I'm going to reserve the rest  
23 of my time for tomorrow.

24 Okay?

25 A. Sure.

1           Q.       When you were on-site in East  
2   Palestine, as I understand it, you maintained  
3   a field notebook of your activities.

4                   Is that right?

5           A.       I did for a little while.

6           Q.       Well, let me ask you about  
7   that.

8                   Is that -- is it your standard  
9   practice at train derailments to maintain a  
10  field notebook?

11          A.       I try.

12          Q.       And what's the purpose for  
13  maintaining a field notebook?

14          A.       Traditionally, and in my world,  
15  it's to make sure I'm capturing notes that I  
16  try to put on our daily drawn paperwork.

17          Q.       In your East Palestine field  
18  notebook, what sorts of things did you  
19  include?

20          A.       Anywhere from our people to a  
21  narrative of what did we do today. It's  
22  pretty much trying to tell our customer,  
23  here's what we did for you today. That's  
24  kind of my narrative at the end of the  
25  paperwork.

1           Q.       Sir, you've talked a lot  
2   about -- today about discussions that you had  
3   with the folks at Oxy Vinyls in Dallas.

4                   Right?

5           A.       It's come up a couple times,  
6   yes.

7           Q.       Yeah.

8                   And I take it that that's the  
9   sort of thing you would have jotted down in  
10   your field notebook, what those discussions  
11   were?

12          A.       Not necessarily, no.

13          Q.       Are you saying you didn't,  
14   or --

15          A.       I did not.

16          Q.       Oh. So you -- so you -- in  
17   your field notebook, you did not take any  
18   notes of the discussions that you had with  
19   the folks at Oxy Vinyls?

20          A.       If I did, it got washed -- I  
21   don't know if you know this or not.

22          Q.       I know -- just let's --

23          A.       It got washed.

24          Q.       Let's stick to my questions.  
25   I'll get you where you want to go.

1           A.       I don't remember taking many  
2 notes --

3           Q.       Okay.

4           A.       -- if any.

5           Q.       Can you recall any notes that  
6 you would have put down into your field  
7 notebook?

8           A.       I don't.

9           Q.       Would you have recorded  
10 temperatures in your field notebook?

11          A.       I don't think so. If I did, it  
12 would have been the one that I took that's --  
13 maybe the one I took. Maybe.

14          Q.       Would you have put in notes  
15 about what to do about the Trinity VCM car?

16          A.       No.

17          Q.       Would you have put in notes  
18 about what -- so now I'm a little bit  
19 confused. I mean, these are pretty important  
20 issues that I'm asking about, and you're  
21 saying, no, that wouldn't go in the field  
22 notebook, that wouldn't go in the field  
23 notebook.

24                    Tell me what would go in the  
25 field notebook.

1           A.       My field notes have to do more  
2   with broad statements of what service did we  
3   provide today for Norfolk Southern.

4                   When they have consultants like  
5   CTH {sic} and Arcadis on the scene, all the  
6   kind of chronological notes of capturing the  
7   event is in their consultant world. So I  
8   traditionally don't take a lot of detailed  
9   notes.

10          Q.       So ultimately you -- as I  
11   understand it, that -- your field notebook  
12   ended up in the wash?

13          A.       Unfortunately, yes.

14          Q.       And tell me when that was  
15   relative to the vent and burn.

16          A.       It would have been afterwards.

17          Q.       How long afterwards?

18          A.       Within a week or two  
19   afterwards.

20          Q.       So the vent and burn -- or  
21   excuse me. The field notebook was, what,  
22   contained in a jacket? A pair of jeans?  
23   Where was it?

24          A.       We have what we call Tecasafe  
25   fabric, Tecasafe coveralls, flame-resistant

1 coveralls. It was in a bellows pouch pocket,  
2 and I didn't remember that it was there when  
3 I washed it.

4 Q. I saw a text you've probably  
5 seen where somebody said, sorry about your  
6 field notebook.

7 Have you seen that?

8 A. I haven't, but --

9 Q. Okay. What was your reaction  
10 to learning that your -- you put your field  
11 notebook through the wash?

12 A. I was pretty embarrassed at  
13 myself, pretty mad at myself.

14 Q. Why is that if it just doesn't  
15 contain any information that's relevant?

16 A. It contains information  
17 relevant to me and Norfolk Southern for my  
18 invoicing.

19 Q. Got it.

20 A. It's my notes of trying to show  
21 them in our narrative, you know...

22 Q. When you took the field  
23 notebook out of the wash, did you review it  
24 to see if anything was legible anymore?

25 A. It was smeared. It was -- I

1     threw it away.

2             Q.       All right.  You obviously  
3     billed Norfolk Southern for the work that  
4     SPSI conducted --

5             A.       Yes, sir.

6             Q.       -- as part of the derailment  
7     management.

8                     How much has SPSI invoiced  
9     Norfolk Southern for all the work involved  
10    in -- that you've done at East Palestine?

11            A.       I honestly don't know.  I'd  
12    have to ask our CFO on that one.

13            Q.       All right.  Give me a ballpark.

14            A.       I truly don't know right now.  
15    It was pretty chaotic last year for that --  
16    that -- we -- the biggest variable in that is  
17    transportation disposal of RCRA wastewater.

18            Q.       Has SPSI invoiced more than a  
19    million dollars?

20            A.       Yes.

21            Q.       More than \$5 million?

22            A.       Yes.

23            Q.       More than \$10 million?

24            A.       Yes.

25            Q.       More than \$15 million?

1 A. Yes.

2 Q. More than \$20 million?

3 A. Yes.

4 Q. More than \$50 million?

5 A. Yes.

6 Q. More than \$100 million?

7 A. Yes.

8 Q. More than \$200 million?

9 A. I don't think so.

10 Q. So between 100 million and  
11 \$200 million, what's your best estimate for  
12 how much SPSI has invoiced Norfolk Southern  
13 for work its work in East Palestine?

14 A. I know as the president I  
15 should know that answer, and I'm just a  
16 little embarrassed that I don't. I'd have to  
17 ask my CFO that question.

18 Q. Well, that's something, if I  
19 asked you tomorrow, you could find out and  
20 tell me?

21 A. Yes, I can find out tonight.  
22 Yes.

23 Q. Okay. Thanks.

24 Have you received any -- so  
25 when you -- when you bill Norfolk Southern



1 for SPSI's work, do you bill your employees  
2 by the hour? How does the billing work?  
3 What do you get paid for?

4 A. Time and materials.

5 Q. Okay.

6 A. Personnel and our equipment.

7 Q. Okay. Did SPSI receive any  
8 bonus payments or any independent payments  
9 from Norfolk Southern for the work that you  
10 did in East Palestine?

11 A. No.

12 Q. I take it you've done prior  
13 work for Norfolk Southern.

14 Is that right?

15 A. Yes.

16 Q. Can you tell me, just focusing  
17 on derailments, how many -- how many  
18 derailments you've worked for Norfolk  
19 Southern?

20 A. It would be too many to count.  
21 It's been a long time.

22 Q. All right. Since the East --  
23 your work in East Palestine, has SPSI been  
24 retained by Norfolk Southern to do other  
25 work?

1 A. Yes.

2 Q. What sorts of work?

3 A. Oh, some nonemergency  
4 separators, some derailments, some transfers  
5 in the -- in the -- one of the examples I  
6 gave you of some maybe in-yard sideswipe  
7 needs transferred, repackaged, stuff like  
8 that.

9 Q. Has SPSI ever been sued for its  
10 role in a train derailment or derailment  
11 cleanup?

12 A. No, sir.

13 Q. Have you ever provided a  
14 deposition or other testimony in any  
15 litigation involving a train derailment?

16 A. Not until this experience, no.

17 Q. Okay. I think -- well, let  
18 me -- I thought I was going to, and now I'm  
19 gonna not be quite done.

20 You witnessed the vent and burn  
21 operation.

22 Correct?

23 A. Yes.

24 Q. Where were you standing? How  
25 close were you?

1           A.       I was behind Brave Industries  
2   on the north.

3           Q.       The complaint that Norfolk  
4   Southern filed against Trinity references a  
5   video that they claim showed polymerized  
6   material escaping from one of the VCM cars.

7                   Are you familiar with that  
8   video?

9           A.       I saw it long after the fact.  
10   I hadn't seen it until Chip mentioned it at  
11   the NTSB hearing. And I said, who has this  
12   video? I'd like to see it.

13                   So I did see it. And I don't  
14   remember who has it, but I did see it.

15          Q.       And can you describe for me  
16   what it showed that indicated to you that  
17   polymerized material was escaping from that  
18   car?

19          A.       So it was the western-most car,  
20   and in Chip's testimony, he described like  
21   sparklers. I had not seen that because I was  
22   kind of behind the building when it ignited.

23                   But there does show like what  
24   appears to be chunks of things burning away  
25   from the vertical -- the vertical pressure

1 vapor and liquid throwing vertically. There  
2 does appear to be chunks of stuff kind of  
3 kicking out from that column.

4 Q. And do you have any independent  
5 knowledge or view as to what those, what you  
6 called chunks, are?

7 A. We believe from all the  
8 chemistry that we learned about vinyl  
9 chloride, we believe that it was polymerizing  
10 from all indications we had from that  
11 particular car.

12 Q. I understand that.

13 But I'm asking you, when you  
14 saw these what you called chunks, other than  
15 your view that you thought polymerization was  
16 happening, what would a polymerized chunk  
17 look like?

18 A. Flying, burning plastic in a  
19 generic sense.

20 Q. What color?

21 A. Orange-white fire.

22 Q. So you thought you saw  
23 orange-white chunks that were coming out of  
24 this car that you thought were polymerized  
25 material?

1           A.       I saw the video that someone  
2 brought to my attention, and it kind of  
3 backed up what Chip said he observed.

4           Q.       Right.

5                    But I'm asking now what you saw  
6 with your own eyes. All right?

7                    Your --

8           A.       I saw a video months after the  
9 fact.

10          Q.       I understand that.

11          A.       You're asking me to go off  
12 somebody's smartphone video.

13          Q.       Let me get my question out.

14          A.       Okay.

15          Q.       You saw a video, right?

16                    Somebody tells you the video  
17 shows polymerized material coming out.

18                    Right? Yes?

19          A.       Yes.

20          Q.       You then view that video.

21                    Correct?

22          A.       Yes.

23          Q.       You see what you've just  
24 testified to me were white-orange chunks  
25 coming out.

1 Correct?

2 A. Yes.

3 Q. And how big were these  
4 white-orange chunks?

5 A. I can't guess. I don't know  
6 how far. But there were so many  
7 measurements, I couldn't guess.

8 Q. And do you have an independent  
9 view, based on your knowledge of  
10 polymerization, that those white-orange  
11 chunks were in fact polymerized material  
12 versus something else?

13 A. Is it possible it was something  
14 else? I concede it's possible it was  
15 something else.

16 Q. You just -- you don't know one  
17 way or the other.

18 Right?

19 A. You can't be 100 percent sure.

20 Q. Well, you can't be 50 percent  
21 sure.

22 Right?

23 You don't know what was in  
24 that -- what was coming out in those  
25 orange-white chunks?

1           A.       Solidified material from that  
2     tank car were leaving the column as it was  
3     burning.

4  
5           Q.       Again, I'm on the last exhibit  
6     or two here.

7                    Okay. What number are we up to  
8     here?

9                    By the way, before we come to  
10    Exhibit 17, you said that the video that you  
11    just testified about that you saw, where did  
12    you see that?

13           A.       I was trying to remember who  
14    showed it to me. I think it might have been  
15    Scott Gould. I don't recall whether it was  
16    him or Jon Simpson or another contractor. I  
17    just don't remember who showed it to me.

18           Q.       And when did you see it?

19           A.       It was after the NTSB hearings.

20                    (McCarty Exhibit 17 marked for  
21    identification.)

22    QUESTIONS BY MR. SWANSON:

23           Q.       Okay. So Exhibit 17 is a text  
24    chain between you and Chip Day dated  
25    February 9, 2023.

1 Correct?

2 A. 2/9/2023, yes.

3 Q. And as you just peruse this,  
4 you recall this text chain, I take it?

5 A. Yes.

6 Q. So February 9 is three days  
7 after the vent and burn?

8 A. The 9th, yeah -- yes.

9 Q. And Mr. Day is sending you  
10 pictures that I will concede in the -- in the  
11 exhibit that was -- that was produced to us  
12 that the pictures are sort of hard to see or  
13 make out.

14 But you recall getting pictures  
15 from Mr. Day on this date.

16 Correct?

17 A. Yes.

18 Q. Who took the pictures?

19 A. I'm -- that would have to be  
20 Chip on his smartphone to send them to me.

21 Q. Do you know what the pictures  
22 are?

23 A. He described it -- I kind of  
24 asked him that in one of the texts. I said,  
25 are these inside the cars?



1                   He said, yes. Or he said,  
2     inside.

3                   And I asked him, hard to tell  
4     from photos. Polymers, question mark?

5                   He said, yes, sir.

6                   And I just acknowledged.

7           Q.       So if you look at the first two  
8     texts he sends you, there are two pictures.

9                   Right?

10          A.       Yes.

11          Q.       And then he texts you the word  
12     "justice," all caps with three exclamation  
13     points.

14                  Right?

15          A.       Yes.

16          Q.       What did you understand that to  
17     mean?

18          A.       Chip was -- I mean, we were  
19     obviously -- I -- I'd say -- I shouldn't  
20     speculate what Chip meant, is what I should  
21     say right now.

22                  I know what Chip was thinking.  
23     He felt that -- you know, the same way that  
24     we all felt when Oxy folks said that they  
25     just didn't think it was polymerizing. But

1 yet we know nitrogen left the car Friday  
2 night, and we just had our doubts, right? We  
3 just -- we just couldn't go on them thinking  
4 that it wasn't polymerizing.

5 And in his mind -- this is just  
6 Chip. I just -- I've known Chip for a long  
7 time and, you know, he's basically just  
8 saying, like, hey, there was polymers here.  
9 That's what he's trying to say. You know,  
10 that's the perspective.

11 Q. Yeah. I mean, from the time  
12 the vent and burn was executed, you and  
13 Mr. Day were both looking for evidence of  
14 polymerization.

15 Correct?

16 A. I wasn't.

17 Q. Well, can you -- do you know  
18 when -- can you look at these pictures? And  
19 if you can't from the -- from the quality we  
20 have here, I understand.

21 But can you tell me in looking  
22 at those what the evidence of polymers is?

23 A. Well, I wasn't there looking at  
24 whatever Chip looked at, whatever he took  
25 pictures of, and that's why I asked him what

1 these were. So that's a question for Chip.

2 Q. Okay. So you can't look at  
3 these pictures and point to something and say  
4 that's a polymer or not a polymer?

5 A. I can't off a photograph.

6 Q. Do you think that -- is Mr. Day  
7 qualified, do you think, to look at a picture  
8 and identify polymers from a burned-out tank  
9 car?

10 MR. LEVINE: Objection.

11 THE WITNESS: He's worked for  
12 Oxy a lot longer than I have, and I  
13 would think he knows what polymers  
14 are.

15 QUESTIONS BY MR. SWANSON:

16 Q. You wouldn't be the one to look  
17 at a picture and say, that's a polymer,  
18 that's not a polymer, even if the quality was  
19 better than this.

20 Is that fair?

21 A. Well, that's why I asked him.

22 Q. Yep. No, I understand.

23 But is that a fair assessment  
24 that I just made?

25 A. Yes.

1 MR. SWANSON: Okay. So with  
2 that, sir, I appreciate you answering  
3 my questions. I'm going to reserve  
4 whatever time I have for tomorrow.

5 We can go off the record and  
6 decide if we want to continue on or  
7 call it.

8 MR. HANSON: Sure.

9 MR. SWANSON: So, thank you.

10 VIDEOGRAPHER: Off the record  
11 at 4:38.

12 (Off the record at 4:38 p.m.)

13 VIDEOGRAPHER: We are now back  
14 on the record at 4:56.

15 DIRECT EXAMINATION

16 QUESTIONS BY MS. HERLIHY:

17 Q. Good afternoon, Mr. McCarty.

18 A. Good afternoon.

19 Q. We met earlier. My name is Kim  
20 Herlihy. I represent Oxy Vinyls.

21 Thanks for your time today. I  
22 know you've had many opportunities to talk  
23 about the train derailment at this point, so  
24 we appreciate you doing it once more.

25 Prior to the train derailment,

1 did you have a business relationship with Oxy  
2 Vinyls?

3 A. Yes.

4 Q. And how would you describe that  
5 relationship?

6 A. We are one of Oxy's emergency  
7 response contractors for both emergencies,  
8 and occasionally that, similar I mentioned to  
9 the Trinity fellow, was those C6r valve and  
10 fitting services on the nonemergency service  
11 events.

12 Q. Okay. How long has SPSI been a  
13 contractor of Oxy Vinyls?

14 A. I don't remember when we first  
15 started working for Oxy, but it's been a long  
16 time. Maybe for the whole time we've been in  
17 business. Could be 20 years. Could be at  
18 least 15. Somewhere in that area.

19 Q. Okay. Is your relationship  
20 limited to Oxy Vinyls or is it a broader  
21 relationship with the entire chemical  
22 corporation?

23 A. I'd have to go back to our  
24 contract and see if it's Occidental Chemical  
25 Corporation or just Oxy Vinyls. I'd have to

1 go back and refresh my memory on that.

2 Q. Okay. You mentioned -- I think  
3 I understood you to say that Chip Day has  
4 been working with Oxy Vinyls longer than you  
5 have?

6 A. Yes.

7 Q. And how long has he been  
8 working with Oxy Vinyls?

9 A. My understanding, he's been a  
10 vendor dating back to the '90s, working for  
11 Oxy through his career experiences.

12 Q. Okay. And have you and SRS  
13 competed from time to time for Oxy business?

14 A. Yeah, indirectly or directly.  
15 I won't say we really competed, as -- we're  
16 certainly competitors. We're business  
17 competitors. But we also -- frankly, due to  
18 The Chlorine Institute programming, we do  
19 occasionally subcontract each other because  
20 of the services we provide in geographic  
21 areas.

22 Q. Does one or the other of you  
23 have a closer relationship with Oxy Vinyls,  
24 to your knowledge?

25 A. I don't consider my personal

1 relationship very close with Oxy. I have a  
2 good relationship with the folks from Oxy  
3 that I deal with, but I -- we don't do what  
4 I'll call regular business with Oxy. I  
5 wouldn't think that we're a big vendor for  
6 Oxy.

7 Q. Okay. In that, I think you  
8 said, 15- to 20-year period that you've had a  
9 business relationship with Oxy Vinyls, how  
10 many engagements have you been subcontracted  
11 on or contracted on?

12 A. Probably a round number of a  
13 half a dozen.

14 Q. Were any of those train  
15 derailments?

16 A. Not contracted by Oxy, but  
17 worked with Oxy at Paulsboro comes to mind.

18 Q. Okay. We'll set that aside for  
19 a moment.

20 But in this half dozen or so  
21 engagements by Oxy, none of those were train  
22 derailment cases.

23 Is that correct?

24 A. Let me think clearly before I  
25 answer it.

1 Q. Okay. Sure. It's late in the  
2 day. Take your time.

3 A. Yeah, I don't think Oxy had any  
4 of its own derailments in the plants that we  
5 responded to, so I'll say -- yeah, it  
6 wouldn't have been -- Oxy wouldn't have  
7 contracted us for a derailment.

8 Q. Okay. Did any of them involve  
9 vinyl chloride monomer?

10 A. Yes.

11 Q. Okay. Which one or ones?

12 A. Whoo. I can vividly recall  
13 working with the Oxy Vinyls strike team in  
14 Illinois, Urbana, Illinois, area on, I think  
15 it was, the Canadian National Railway. I  
16 can't remember if the car was banged up or it  
17 had some reason why we were hired to transfer  
18 it.

19 Oxy sent their strike team to  
20 the site and worked with Oxy's strike team on  
21 that transfer.

22 They provided the safety  
23 oversight, kind of just, you know, Oxy's ears  
24 and eyes on the site kind of thing. That  
25 would have been one example.



1 Paulsboro, New Jersey, 2012,  
2 was another example. Again, it wasn't Oxy's  
3 derailment, but Oxy's products were involved.

4 There was a loaded vinyl  
5 chloride car a couple years ago. I remember  
6 Tim Kelly calling on a Friday afternoon, and  
7 I can't remember exactly where. I want to  
8 say somewhere in Iowa. The pressure plate  
9 was leaking. The loaded car had arrived at a  
10 consignee, one of the Oxy customer sites,  
11 leaking from the pressure plate.

12 The customer called Oxy. Oxy  
13 called us. We sent a couple guys out with  
14 PPE and tools to take care of that leak.

15 Those are three that come to  
16 mind.

17 Q. Okay. Just to back up a little  
18 bit.

19 I understand the Paulsboro  
20 incident, you were not engaged by Oxy.

21 Correct?

22 A. That's correct.

23 Q. Okay. In the Illinois Canadian  
24 Railway matter, were you engaged by Oxy in  
25 that matter?

1           A.       No. We would have worked for  
2 the railroad.

3           Q.       Okay. And then in the -- you  
4 think it was Iowa incident where Tim Kelly  
5 called you, were you engaged by Oxy in that  
6 event?

7           A.       Yes.

8           Q.       Okay. So as far as engagements  
9 by Oxy of SPSI, is that the only one that  
10 involved vinyl chloride, the one in Iowa that  
11 Tim Kelly called you about?

12          A.       Possibly. I'm trying to think.  
13                   We've also done some C6r work  
14 for Oxy. I just -- I'm just not intimately  
15 in tune with each repair we do because I have  
16 people that manage that service for us. And  
17 I know that we've done some things for Oxy's  
18 tank car fleet people. I don't recall any  
19 specific vinyl chloride cars that might have  
20 been in that.

21                   I know, you know, from caustic  
22 to vinyl to other things Oxy Vinyls has that  
23 we may have had some tank car repair  
24 activity. I don't know with memory.

25          Q.       Okay. The only one that you

1 specifically remember is the one that you  
2 think was in Iowa that Tim Kelly called you  
3 about?

4 A. Yeah, that was fairly -- I'm  
5 going to say within the last couple of years.

6 Q. Okay. And was that -- that was  
7 a -- involved a railcar, a tank car?

8 A. Yes, ma'am.

9 Q. And what was the status of that  
10 tank car? Was it --

11 A. It was loaded.

12 Q. -- still -- okay.

13 A. It was loaded. It had just  
14 arrived at the Oxy customer's site.

15 Q. And you said there was  
16 something leaking from the pressure plate?

17 A. Yes. The -- your customer's  
18 site personnel found the pressure plate, the  
19 circumferential flange bolting down into the  
20 car, was leaking.

21 Q. Okay. And what did SPSI do to  
22 resolve that issue?

23 A. We were able to, one, verify  
24 that and snug it down. We were able to get  
25 some momentum and torque on the pressure

1 plate nuts to tighten that up and stop the  
2 leak.

3 Q. Okay. So you didn't have to  
4 take any of the offloading or transloading  
5 measures or re-railing measures that you  
6 talked about at length with Trinity's  
7 counsel.

8 Right?

9 A. No, it was at their rack, and  
10 they just wanted their product. So once we  
11 stopped the leak, they went back to business  
12 as usual and unloaded the product to your  
13 customer.

14 Q. Was there any concern or  
15 discussion about polymerization at that time?

16 A. Not in that scenario.

17 Q. Okay. Who would you consider  
18 your chief contact at Oxy Vinyls? Is it Tim  
19 Kelly?

20 A. Yes.

21 Q. How long has that been the  
22 case?

23 A. I don't -- I don't recall, but  
24 it's been a while. I mean, it's -- he's been  
25 in the emergency response role for a while

1 for Oxy.

2 Q. Okay. Who else has been a  
3 contact for you at Oxy over the years?

4 A. A couple fellows in the strike  
5 team, that Justin Cox and Kevin Machemehl.  
6 David Gray at one point. I know he's no  
7 longer with Oxy. Years ago it was John  
8 Makazlit {phonetic}. I know he's no longer  
9 with Oxy.

10 Some of -- the Diane Larsons,  
11 Butch Polasek, those folks, before they  
12 retired.

13 Q. And how long have you worked  
14 with Justin Cox?

15 A. It's been predominantly with  
16 the CHLOREP programming in Mississippi, so  
17 it's been several years.

18 Q. How many Oxy engagements have  
19 you had in which you were working with Justin  
20 Cox?

21 A. With Justin on a response, that  
22 was the first time.

23 Q. In East Palestine?

24 A. Yes.

25 Q. Okay. How many times previous

1 to East Palestine had you worked with SRS?

2 A. Can I back up to the Justin Cox  
3 one?

4 Q. Sure.

5 A. I can't remember if Justin Cox  
6 was in Paulsboro or not. I remember Kevin  
7 Machemehl being kind of like the Vinyl lead  
8 at Paulsboro, but I'm now having foggy  
9 memory.

10 Maybe Justin would have been  
11 there, too, and I just don't remember, but I  
12 don't want to miss that in the record.

13 Q. Okay.

14 A. And I'm sorry, what was your  
15 next question?

16 Q. I'll go back to that in a  
17 minute --

18 A. I'm sorry.

19 Q. -- but let me, since you raised  
20 that question about Paulsboro.

21 Do you recall Kevin Machemehl  
22 being on the scene in Paulsboro?

23 A. I do.

24 Q. Okay. And who else from Oxy do  
25 you recall being on the scene in Paulsboro,

1 if anyone?

2 A. The plant manager from the  
3 Paulsboro's plant at the time, and I don't  
4 recall his name. I'm sorry.

5 Q. And they were there to provide  
6 technical advice about vinyl chloride?

7 A. Yes, and logistical support.

8 The local plant was pulling  
9 cars in to vacuum in support of tactics.

10 Q. Okay. When you say "in support  
11 of tactics," what do you mean?

12 A. So at Paulsboro, there was a  
13 breached car vinyl -- it was impaled by  
14 another tank car, shelf coupler and sill.

15 There was auto-refrigerated  
16 vinyl chloride in that -- in the low end of a  
17 breached car, and we were trying to get it  
18 extracted through vane pumping and other  
19 methods, and pulling cars in the vacuum on  
20 the -- we had a good rail that pulled right  
21 up to man to a bridge, man to a creek bridge.  
22 It's a turntable bridge.

23 So we had receiving cars and  
24 daigy -- excuse me, daisy chaining cars as we  
25 were rotary vane pumping and vacuuming at the

1 same time, which helped extract that  
2 auto-refrigerated vinyl.

3 Q. And Oxy was helping with  
4 logistic support for that operation?

5 A. Yes. Oxy was at the Paulsboro  
6 plant, pulling those cars down in the vacuum  
7 so that they could enhance that performance  
8 of that vane pump operation.

9 Q. Okay. In the Paulsboro  
10 incident, there was in fact a breach of the  
11 railcar.

12 Correct?

13 A. Yes.

14 Q. In East Palestine, the vinyl  
15 chloride cars did not breach.

16 Correct?

17 A. That's correct.

18 Q. In the Paulsboro incident, was  
19 the vinyl chloride exposed to the air upon  
20 breach?

21 A. Yes.

22 Q. Was it opposed -- exposed to  
23 sunlight upon breach?

24 A. Yes. Potentially, yes.

25 Q. Was it exposed to heat upon



1 breach?

2 A. Well, cold work. When a shelf  
3 coupler would have punched through it, yeah,  
4 there would have been some heat of cold work  
5 when that happened.

6 Q. Did the vinyl chloride in that  
7 instance polymerize in any way?

8 A. No.

9 Q. And eventually the vinyl  
10 chloride was loaded to another railcar or to  
11 another vessel and removed?

12 A. In what happened there, we  
13 maximized recovery, whatever -- we removed it  
14 from whatever. Starting thousand-plus was  
15 down to like less than 500 into those  
16 receiving Oxy tank cars. And what was left,  
17 we ended up putting a carrier solvent acetone  
18 down into the railcar.

19 As the chemists describe it to  
20 me, it would be like putting marbles in this  
21 bottle. The VCM behaves like marbles in the  
22 solution. Then you take the marbles and  
23 everything out of the pumping solution, and  
24 it worked like a champ.

25 So there was a couple different

1 tactics at Paulsboro.

2 Q. Okay. When you say the  
3 chemists described it to you, do you mean the  
4 chemists at Oxy?

5 A. No, that was actually -- at the  
6 time, that would have been Barry Lindley. At  
7 the time, he would have worked for DuPont.  
8 Or Chemours. I can't remember when DuPont  
9 and Chemours -- but he was a DuPont guy for  
10 years.

11 Q. And how did Barry Lindley  
12 happen to be consulted with respect to that  
13 incident?

14 A. Barry has been -- on my  
15 personal career, Barry is one of two DuPont  
16 chemists that were on their DuPont global  
17 team that were always kind of very  
18 responsible care, offering to help others,  
19 you know, regardless of who the responsible  
20 party was.

21 So very solid, street smart  
22 chemists that have gotten me through a lot of  
23 jobs over the years.

24 Q. So you reached out to Barry  
25 Lindley?

1           A.       Yes.

2           Q.       And did you employ Barry  
3 Lindley? Or was he contracted to help with  
4 that derailment in any way?

5           A.       No, huh-uh. It was just  
6 offering his knowledge.

7           Q.       Did you reach out to Barry  
8 Lindley with respect to East Palestine at  
9 all?

10          A.       No, not during East Palestine.  
11 But I had had his teachings -- like I say,  
12 he's one of the many that have taught me over  
13 the years.

14          Q.       Okay. Was there reason not to  
15 reach out to him?

16          A.       Like I say, we felt all the --  
17 all the things we were experiencing -- no,  
18 no, I didn't feel moved to call him during  
19 the weekend, no.

20          Q.       Okay. Did you ever talk to Bob  
21 Gold from -- formerly of Westlake, with  
22 respect to the East Palestine train  
23 derailment?

24          A.       Only before the NTSB -- I'm  
25 sorry, not NTSB, but this Senate Commerce

1 Committee. I did give Bob a call, because  
2 he's one that I'd learned from through The  
3 Chlorine Institute over the years.

4 And he did confirm. I mean, he  
5 didn't tell me anything we weren't already  
6 feeling.

7 Q. And what kind of questions did  
8 you ask of Bob Gold?

9 A. I just asked him to confirm,  
10 you know, how do people -- how does the  
11 polymerization -- you know, how do they --  
12 how do they initiate polymerization in the  
13 plants.

14 And he said, it's real simple.  
15 They put it in a reactor, put steam to the  
16 internal reactor and kick off polymerization.

17 Q. Did he tell you that they don't  
18 use any kind of initiator?

19 A. He never mentioned initiators.

20 Q. Okay. Because earlier I think  
21 there was some testimony that at least you  
22 had -- you had reason to believe that  
23 Westlake polymerizes VCM into PVC without an  
24 initiator.

25 Do you know whether that's true

1 or not?

2 A. I believe that may have been  
3 something that was read from a Mr. Day  
4 testimony, perhaps. But I can tell you  
5 since -- you asked me a question; I'll give  
6 you an honest answer.

7 Q. Sure.

8 A. I called Bob Gold before the  
9 Senate Commerce Committee just to -- just to  
10 make sure that I'm not missing something.  
11 And I felt good after that phone call that I  
12 really didn't.

13 Q. But you didn't ask him, it  
14 sounds like, can VCM polymerize without an  
15 initiator.

16 You just didn't talk about  
17 initiators in that call?

18 A. No, I didn't ask him that  
19 specific question.

20 Q. Did you ask him whether VCM can  
21 polymerize purely by the application of heat?

22 A. That's pretty much what he told  
23 me. I can't say I asked him that question.

24 I think I asked him a question  
25 of how do you guys polymer -- how do you do

1 your plant? How do you make your stuff?

2 And that's what he told me.

3 Q. He told you, we apply heat, and  
4 that's it?

5 A. Yes.

6 Q. Okay. He didn't mention  
7 anything about an initiator?

8 A. No.

9 Q. Okay. What does Bob Gold do  
10 today; do you know?

11 A. I don't know. I know he's  
12 retired from Westlake, but I don't know.

13 Q. Okay. But you didn't talk to  
14 him before the vent and burn operation.

15 Correct?

16 A. No.

17 Q. And you've just had that one  
18 conversation with him?

19 A. Yes.

20 Q. Okay. Okay. I want to take  
21 you back to a couple of the times that you've  
22 been lucky enough to sit in this chair and be  
23 asked questions by lawyers or NTSB members.

24 So following the derailment --  
25 and we already looked at this -- you were

1 interviewed by the NTSB.

2 Correct?

3 A. Yes, ma'am.

4 Q. And that was within a few weeks  
5 of the derailment.

6 Right?

7 A. Yeah. I was reminded today, it  
8 was the 23rd of February.

9 Q. Good. Thanks for reminding me.

10 A. Yeah, this was on the document.

11 Q. At the time, what did you do to  
12 prepare for that hearing -- or I'm sorry, for  
13 that interview?

14 A. Absolutely nothing.

15 Q. Okay.

16 A. I was pretty much in the  
17 trenches 16 hours a day and left the trenches  
18 to go meet those folks at the church.

19 Q. Okay. That was kind of what I  
20 was going to ask you.

21 I assume you spent a lot of  
22 time in East Palestine between February 3rd  
23 and February 23rd.

24 Right?

25 A. Yes, ma'am.

1 Q. Do you think you were there  
2 most of the time between the 3rd and the  
3 23rd?

4 A. I was there literally every day  
5 from the 3rd of February, night, the night  
6 of. Other than commuting to my house for  
7 naps and showers, I worked at East  
8 Palestine -- I didn't get myself on any other  
9 jobs until after, like, sometime at the end  
10 of March. I mean, it was --

11 Q. Okay.

12 A. Once it became where -- it was  
13 kind of like we could see the scope of work  
14 was going to be the scope of work for a while  
15 and I knew things were under control, I kind  
16 of went back to helping other customers.

17 Q. Okay. You were lucky enough to  
18 be within commuting distance and to sleep in  
19 your own bed during that time.

20 Right?

21 A. That was a blessing, yes,  
22 ma'am.

23 Q. So back to that interview.

24 Did you speak with counsel in  
25 advance of that interview?



1 A. No.

2 Q. You didn't meet with lawyers to  
3 prepare you for that interview?

4 A. No.

5 Q. Did you review any documents in  
6 advance of that interview?

7 A. No.

8 Q. And that was, like we said,  
9 maybe about 20 days after the derailment. So  
10 within a few weeks of the derailment.

11 Right?

12 A. It was, yeah, within a few  
13 weeks of the derailment, yes.

14 Q. Okay. We don't need to go  
15 through that interview. I think you've  
16 already kind of recognized it on the record.  
17 I may have a couple of follow-ups on it, but  
18 I don't want to spend a lot of time on it.

19 Now I'm going advance you to  
20 the hearing in East Palestine.

21 So that's in June?

22 A. Yes.

23 Q. I think almost four months  
24 after your interview.

25 Right?

1 A. Uh-huh.

2 Q. Yes?

3 MR. HANSON: You got to say yes  
4 out loud.

5 THE WITNESS: I'm sorry. Yes.

6 MR. HANSON: No, no, it's not  
7 the mic's fault.

8 THE WITNESS: Yes.

9 QUESTIONS BY MS. HERLIHY:

10 Q. It's hard.

11 Between the time of that  
12 interview and the time of your hearing  
13 testimony in June, did you have any other  
14 discussions with the NTSB about the train  
15 derailment?

16 A. I don't think so. I mean, they  
17 called me to let me know I was going to be  
18 getting this notice to show up, you know.

19 Other than that notice,  
20 offering to make travel plans for me, things  
21 like that, not that I can recall, no.

22 Q. Okay. Yeah, maybe I should  
23 have been a little more clear.

24 You didn't have any other  
25 substantive discussions with anyone at the

1 NTSB between February 23rd and then when you  
2 testified at the hearing in June.

3 Right?

4 A. No.

5 Q. Okay. What did you do to  
6 prepare for the hearing in June?

7 A. What I learned in this process,  
8 as you-all as attorneys would call attorney  
9 prep days, to kind of educate me about the  
10 process. Certainly not tell me what to say,  
11 but maybe kind of coach me on, like, listen  
12 carefully to the questions, the things that  
13 all you good attorneys would do with your  
14 clients, that kind of stuff.

15 Q. So you engaged counsel?

16 A. Yes.

17 Q. And met with counsel to prepare  
18 for the hearing?

19 A. Yes.

20 Q. How many days did you spend  
21 preparing with counsel?

22 A. I don't recall.

23 Q. Multiple?

24 A. In-person days, maybe one and a  
25 half. There were some kind of cyber, what do

1 you call WebEx-type calls. Maybe less than  
2 five, maybe.

3 Q. Okay.

4 A. It's a little foggy. I'm  
5 sorry, I don't remember that number.

6 Q. Quite all right.

7 So I call them remote meetings,  
8 I guess.

9 A. There you go, yeah.

10 Q. Five or less remote meetings  
11 with counsel, and one and a half days of  
12 in-person prep?

13 A. Yeah, that sounds right.

14 Q. Okay. And from what firm --  
15 well, let's say it this way.

16 There are two law firms here  
17 with you today.

18 Correct?

19 A. Yes, ma'am.

20 Q. Were you meeting with  
21 representatives from each of those firms in  
22 advance of the hearing?

23 A. Yes.

24 Q. Okay. And do both firms  
25 represent you?

1           A.       No.   Dentons represents me and  
2   SPSI.

3           Q.       Okay.   And WilmerHale  
4   represents Norfolk Southern?

5           A.       Yes.

6           Q.       Okay.   Were the lawyers from  
7   WilmerHale part of all of those prep sessions  
8   that you had before the hearing in June?

9           A.       I believe so.   I can't recall  
10   any that were just us.   I believe so.

11          Q.       Okay.   And was it the same  
12   people that are here today from WilmerHale  
13   and from Dentons?

14          A.       No.   No.   Actually, no.

15          Q.       Who do you recall from  
16   WilmerHale being part of your prep sessions  
17   for the June hearing?

18          A.       A lady named Katie from  
19   California, but I'm sorry, I'm not good  
20   with -- again, I didn't take a lot of notes.

21          Q.       That's quite all right.  
22                    Anyone else?

23          A.       Honestly, it's -- I don't take  
24   good notes --

25          Q.       Okay.

1 A. -- with this stuff.

2 Q. So you don't know the names,  
3 but you understand there was -- there were  
4 lawyers from WilmerHale participating in  
5 those prep sessions?

6 A. Yes, ma'am.

7 Q. And your counsel that's here  
8 with you today was part of those --

9 A. Yes. Yes, Morgan and Lexie  
10 were -- were my -- I guess the continuity.

11 Q. Okay. And you testified just  
12 on the one panel at the NTSB hearing.

13 Correct?

14 A. Yes, ma'am.

15 Q. Okay. Was the first day,  
16 second panel?

17 A. Yes, I believe that's accurate.

18 Q. And there were representatives  
19 from Oxy on that panel as well.

20 Right?

21 A. Yes, I think so.

22 Q. Mr. Thomas and Mr. Smith?

23 A. Yes.

24 Q. And you had met Mr. Smith in  
25 East Palestine, so you knew him.

1 Right?

2 A. Yes.

3 Q. Had you met Paul Thomas before  
4 that?

5 A. I don't think so.

6 Q. But you had been on calls with  
7 him.

8 Correct?

9 A. There were a lot of people from  
10 Oxy on calls that I -- again, I didn't take  
11 notes of who. There was a lot of  
12 introductions on the calls of who's who, and  
13 I didn't -- I didn't take any notes.

14 Q. Sure. Just kind of like this  
15 room. There's a lot of people in here.

16 A. I shook hands this morning, but  
17 I didn't write any of your names down.

18 Q. I get it. Okay.

19 So you weren't sure whether you  
20 had met him before or spoken to him before?

21 A. Correct.

22 Q. Okay. And there was another  
23 Oxy witness at the NTSB hearing, Karenanne  
24 Stegmann.

25 Do you remember ever speaking

1 with Ms. Stegmann?

2 A. No. I mean, she might have  
3 been a person on one of the calls, but,  
4 again, I don't know with certainty.

5 Q. Do you recall the names of any  
6 Oxy personnel that you spoke with from Dallas  
7 that weekend of the derailment?

8 A. Well, Tim, the response guy,  
9 kind of facilitated getting the calls going.  
10 And again, no, I didn't write down people's  
11 names and their roles, so, no, I was not  
12 taking those detailed notes.

13 Q. Was anyone else who was  
14 listening in on those calls with you taking  
15 notes of the calls?

16 A. Not -- the first call for us,  
17 we were literally in a mop closet, in a broom  
18 closet, in a garage, so I don't think so.

19 Q. Okay. Were you on one of those  
20 calls with Jon Simpson? Do you recall that?

21 A. Norfolk Southern's Jon Simpson  
22 may have been on a call.

23 Q. And another call with Scott  
24 Gould?

25 A. Scott Gould was definitely on



1 the one in the mop closet. I can remember  
2 him being there.

3 Q. Okay. Did you have any  
4 substantive discussions with anyone from Oxy  
5 that Norfolk Southern wasn't present for?

6 A. There was a call -- I'm -- I  
7 want to say it was Sunday morning, at some  
8 point Sunday morning. We were in SRS's  
9 rental car. And it was just myself, Terry  
10 Rockwell, Chip Day, and Kent Farquhar from  
11 SRS.

12 Q. And was Scott Gould on that  
13 call but from another location?

14 A. You know, I don't remember. I  
15 don't know.

16 Q. Okay. Would you have passed on  
17 to Scott Gould anything that happened on that  
18 call with Oxy?

19 A. Either him or Scott Deutsch,  
20 yes.

21 Q. Okay. You mentioned --

22 A. Or Robert Wood. One of the  
23 managers definitely knew.

24 Q. Okay. I noticed you mentioned  
25 those three quite a bit in talking earlier,

1 but not Jon Simpson too often.

2 Is that because you were  
3 working different shifts than Jon Simpson?

4 A. Yeah, he was night shift, and  
5 we had some time -- I overlapped a little bit  
6 each shift to make sure that handoff and that  
7 operation. You know, there was a little bit  
8 of overlap. I made sure we're okay before I  
9 went to my house and took a nap and such,  
10 but...

11 Q. Okay. You had mentioned  
12 earlier that there was kind of a chain of  
13 command or a chain of information where SPSI  
14 and SRS would pass information on to NS, and  
15 NS would pass information on to the incident  
16 command.

17 Do you remember talking about  
18 that?

19 A. Yes, ma'am.

20 Q. And then on the way back,  
21 incident command may share something with NS.  
22 NS may decide whether or not they need to  
23 share that with SPSI and SRS.

24 Does that sound about right?

25 A. Yes.

1           Q.       Were there times where there  
2       was information that SPSI and SRS gathered  
3       but didn't pass on to Norfolk Southern?

4           A.       Not that I'm aware of.

5           Q.       So any information that you  
6       learned, for instance, from discussions with  
7       Oxy you would have passed on to Norfolk  
8       Southern?

9           A.       Yes.

10          Q.       And any information you learned  
11       from your guys in the field, you would have  
12       passed on to Norfolk Southern?

13          A.       Yes.

14          Q.       And that would include  
15       temperature readings or pressure gauge  
16       readings.

17                   Correct?

18          A.       Yes.

19          Q.       Okay. And you personally would  
20       have passed it on to one of the gentlemen  
21       we've just discussed - Mr. Gould,  
22       Mr. Deutsch, Mr. Wood or possibly  
23       Mr. Simpson.

24                   Correct?

25          A.       Yes.

1 Q. Okay. Great.

2 Was there anybody else from  
3 SPSI who was taking that communication role  
4 from time to time and passing information on  
5 to NS besides you?

6 A. Oh, for sure. And it was  
7 specifically with these temperatures, is  
8 where I'm going to hone in on the specifics.

9 That night shift is where that  
10 really started happening. And all that, you  
11 know -- even that timeline on Sunday, Sunday  
12 night into Monday, is when all of that  
13 temperature trending was requested.

14 And, you know, I was present  
15 for the first two entry teams that both  
16 reported the same things, like this is  
17 stupid, why are we doing this, this is bogus  
18 data. And I'll get that same message from  
19 100 percent of my people that were trying to  
20 do it.

21 And I passed that along, not  
22 once, but twice, to Norfolk Southern HAZMAT  
23 staff, and it was Robert Wood and Jon  
24 Simpson. I just don't remember which I told  
25 first, but --

1 Q. Okay.

2 A. So that's, you know, fact-based  
3 sharing that --

4 Q. Okay.

5 A. But my -- I'm sorry, to your  
6 question.

7 They were texting stuff. They  
8 were -- they were basically -- you know, my  
9 guys were trying to do good for our customer.  
10 Our customer was pushing us to do it, so they  
11 were doing what our customer was asking and  
12 pushing data. So that's the perspective.

13 Q. Right.

14 But, for instance, I think we  
15 saw a text where Greg Palmer was passing  
16 information on to Jon Simpson.

17 Right?

18 A. Yes. It looked like it.

19 Q. As far as your guys in the  
20 field who could have been taking  
21 temperatures, I just want to make sure I know  
22 all the names.

23 We talked about D'Shawn.

24 A. Uh-huh.

25 Q. What's D'Shawn's last name?

1 A. Herrera.

2 Q. Herrera. Okay. Thank you.

3 And I'm sorry if I got this  
4 wrong. Was Greg Palmer also taking  
5 temperatures personally?

6 A. No, he was our safety guy for  
7 night shift.

8 Q. Okay.

9 A. He would have been relaying  
10 information.

11 Q. Okay. Who else by name would  
12 have been taking temperatures for SPSI?

13 A. Well, Ryan Tokarski that you  
14 know about. D'Shawn Herrera. And I have  
15 to again go back to notes to remind myself of  
16 that. But I can check that tonight.

17 Q. What notes would you go back to  
18 look at?

19 A. Well, my dailies, you know,  
20 my -- when I say those notes that my notebook  
21 did have early on, it was for my seven --  
22 what we call the seven-day daily. That last  
23 paragraph at the end of every page supporting  
24 our invoice, you know, I did have that early  
25 on, so I had those kind of notes.

1                   Now -- so that's going to tell  
2   me who was on night shift. It's going to  
3   remind my -- who was there at night shift.

4                   And then I can go back to,  
5   like, D'Shawn, and say, okay, D'Shawn, you  
6   and who. You know, I got to remember, you  
7   know, who it was that we confirmed this with,  
8   but...

9           Q.       Okay. Now I'm really confused,  
10   I'm sorry.

11                   You said you would -- you could  
12   go back and look at your notes.

13                   If you went back to your house  
14   or your office, what notes, like physically  
15   what would you look at to answer who was  
16   taking the temperature readings?

17           A.       Okay. Good question.

18                   So the notes don't exist  
19   anymore. I accidentally washed them, and  
20   they got ruined.

21           Q.       Okay.

22           A.       But before they got ruined, I  
23   had -- the dailies were done for that first  
24   week or so of operating. Until my notes got  
25   ruined, they supported our seventh-page

1 narrative.

2 And the NTSB has it. They're  
3 in the NTSB stuff somewhere, so I'm sure  
4 you-all have that.

5 What I'm referring to is, I  
6 have to go back to notes. I'm referring back  
7 to the dailies to remind myself which SPSI  
8 worked night shift. Talk to D'Shawn --

9 Q. I see.

10 A. -- you know, remind myself --  
11 because it was D'Shawn and somebody. You  
12 know, somebody went with him to get the  
13 readings.

14 And I know prior to the  
15 hearings I reverified all this. I knew those  
16 names back in June, but I don't remember now.

17 Q. Okay. You mentioned something  
18 called a seven-page narrative or a  
19 seventh-page narrative.

20 What does that mean?

21 A. So we call it our dailies.  
22 It's a slang term at SPSI. We call it the  
23 daily. So it's -- page 1 is our personnel.

24 Page 2 is our equipment that we  
25 own, our rolling stock.



1                   Page 3 is like meters and  
2     communications.

3                   Page 4 is our PPE and other  
4     expendable materials.

5                   Page 5 is subcontractors and  
6     rental equipment.

7                   Page 6 is any kind of  
8     purchases, like a hotel bill, rental cars,  
9     stuff like that.

10                  And the seventh, the seventh  
11     page is pretty much, what did we do today.

12                 Q.     Okay.

13                 A.     It's just a narrative for our  
14     customers to help support what it is we did.

15                 Q.     Okay. So we -- let's just go  
16     back to the names.

17                   You talked about D'Shawn  
18     Herrera. Ryan Tokarski.

19                   Earlier there was a name  
20     mentioned. Mike Kline?

21                 A.     Mike Kline. He -- I believe he  
22     took some of the readings.

23                 Q.     Okay. And what about Mike  
24     Burket?

25                 A.     Mike Burket was my day shift

1 safety supervisor.

2 Q. Okay.

3 A. And that's where I see, you  
4 know, after I got -- I won't say blindsided.  
5 I just didn't remember ever seeing that  
6 document, and I come to find out in the, you  
7 know, submittals here that he actually  
8 e-mailed it to me back in February.

9 And I don't know that I ever  
10 looked at it because it was long after the  
11 incident.

12 Q. You're talking about a document  
13 that we saw earlier today?

14 A. It was today, yes.

15 Q. And then you've looked at the  
16 e-mail communication of that document on a  
17 break?

18 A. Yes.

19 Q. Okay. And that reminded you  
20 that he did send you that information back  
21 in, I believe, March?

22 A. I don't remember when the date  
23 was, but it was weeks after the derailment.

24 Q. Okay. Were you surprised to  
25 see that when you got it?

1           A.           I'm not sure if I ever opened  
2     it because we were -- like I say, I was in  
3     the trenches 16 hours a day. And at that  
4     era, you know, it didn't seem too pressing,  
5     so...

6           Q.           Okay. I'm old school, so I  
7     just have these -- despite looking so young,  
8     I'm old school, so I have hard copies that  
9     we'll mark as the next exhibit.

10          A.           I'm sorry, she processes --  
11                       MR. HANSON: She has to mark  
12     it.

13                      MS. HERLIHY: What number is  
14     that, Carrie?

15                      (McCarty Exhibit 18 marked for  
16     identification.)

17     QUESTIONS BY MS. HERLIHY:

18          Q.           So I will provide to you  
19     guys -- you can pass out -- pass out as you'd  
20     like a document that we will mark as  
21     Exhibit 18.

22          A.           Thank you.

23          Q.           So, Mr. McCarty, this is an  
24     e-mail from Michael Burket to you on  
25     Thursday, February 23, 2023, at 1:57 p.m.

1 Correct?

2 A. Yes.

3 Q. Do you know whether that's  
4 actually 1:57 p.m. that it was sent, or is  
5 that an indication of some funky, different  
6 time zone?

7 A. I honestly don't know from -- I  
8 just was introduced to this Greenwich thing  
9 yesterday for -- so I don't know.

10 Q. Okay. So you don't know  
11 whether it was two o'clock or whether it  
12 could have been perhaps five hours earlier at  
13 nine o'clock a.m.

14 Right?

15 A. Well, the fact that this isn't  
16 marked at Greenwich Time, I have to take it  
17 at face value that it's Eastern Standard  
18 Time.

19 Q. Okay. So we'll assume this was  
20 sent at 1:57 p.m. on Thursday, February 23rd.

21 Correct?

22 A. Yes.

23 Q. That's the same day that you  
24 were testifying -- or, I'm sorry. That's the  
25 same day that you were interviewed by the

1 NTSB.

2 Correct?

3 A. Yes.

4 Q. Where were you when you were  
5 interviewed by the NTSB?

6 A. In East Palestine at the  
7 church.

8 Q. You said that many times.  
9 Sorry. I missed that.

10 A. That's all right.

11 Q. Were you being interviewed  
12 remotely by the NTSB?

13 A. No. It was in person.

14 Q. Everyone was there in the room?

15 A. Somebody dialed in. Someone  
16 from NTSB was remote, but I don't know who.

17 Q. Okay. Did you have access to  
18 your e-mail that day?

19 A. I mean, I -- maybe.

20 Q. So this appears to have come at  
21 2 in the afternoon, and your interview ended  
22 early afternoon.

23 Do you generally remember that?

24 A. It actually was in the morning.  
25 It was a morning interview.

1 Q. But it ended in early  
2 afternoon.

3 Is that right?

4 A. No. It was over by --  
5 something from like 9 to 11, something like  
6 that.

7 Q. Okay.

8 A. It was definitely over before  
9 lunch.

10 Q. Okay. What exhibit number was  
11 this? 13.

12 Okay. I'm going to ask you to  
13 give me one minute.

14 Okay. So you were interviewed  
15 at 9 a.m., and you say that ended around  
16 11 a.m.

17 Is that your memory?

18 A. Give or take, yes.

19 Q. And then what did you do after  
20 that? Did you return to the job site?

21 A. Stopped in at the Norfolk  
22 Southern, what's called the Norfolk Southern  
23 room at the church just to -- as a courtesy  
24 stop-in with my customer to see if they  
25 needed anything from me before I went back

1 out in the field, and then I went back out in  
2 the field.

3 Q. Okay. All right. I was going  
4 down my list of people who might have taken  
5 temperatures. I just wanted to find out.

6 We had mentioned D'Shawn, Ryan,  
7 Mike Kline. And then when I mentioned Mike  
8 Burket, you didn't think he was somebody who  
9 actually took temperatures. It was like --

10 A. I don't think so, because he  
11 was day shift safety.

12 MR. HANSON: Why don't you let  
13 her finish.

14 THE WITNESS: I'm sorry.

15 QUESTIONS BY MS. HERLIHY:

16 Q. It's a long question. I know  
17 it's hard to wait.

18 He was a day shift supervisor,  
19 you said, or day --

20 A. Safety.

21 Q. Day shift safety officer?

22 A. Yes. Yeah.

23 Q. Okay. And what's the job of a  
24 day shift safety officer?

25 A. Keep the safety plan updated,

1 making sure the shift change job briefings  
2 are documented, and kind of buzz around and  
3 check different operations, just keep an eye  
4 on operations for a safety perspective.

5 Q. Does he take daily or regular  
6 notes of what's going on on job sites?

7 A. I asked him to on this one just  
8 because I was a little tied up otherwise.

9 Q. Okay. The notes that you  
10 mentioned unfortunately went through the  
11 wash, were those notes just for this job in  
12 East Palestine?

13 A. Yeah.

14 Q. Okay. So you had just started  
15 a new notebook for that?

16 A. Yeah.

17 Q. And how -- what's the notebook  
18 look like? How large is this notebook?

19 A. Smaller than a pocket, but -- I  
20 mean, smaller than this, but bigger than a  
21 shirt pocket. It wasn't a shirt pocket  
22 notebook. It was probably a -- I don't know,  
23 a 5 by 7, maybe, something like that.

24 Q. And it's like a flip notebook  
25 with binding on the edge?



1           A.       It had a spiral binder.  
2       Spiral-bound notebook.

3           Q.       Okay. And once it went through  
4       the wash, did you throw it away, or do you  
5       still have it?

6           A.       No, I threw it away. It was  
7       smeared. It was unfortunately a felt-tip pen  
8       that I had been carrying, and it just  
9       smeared.

10          Q.       Okay. How many pages of the  
11       notebook had you filled up?

12          A.       I don't -- I don't recall.

13          Q.       Had you been using that  
14       notebook until the day it went into the wash?

15          A.       Yes.

16          Q.       Did you do the wash at home, at  
17       your house?

18          A.       Yes.

19          Q.       Did you do that wash or did  
20       your wife do that wash, is the real question?

21          A.       If you know my wife, it was me.  
22       Sorry, but --

23          Q.       That's what would happen in my  
24       house as well.

25                    Okay. Can we pull out -- could

1 we get Exhibit 2? Or Tab 2. Sorry. Tab 2.

2 (McCarty Exhibit 19 marked for  
3 identification.)

4 QUESTIONS BY MS. HERLIHY:

5 Q. All right. I guess we'll mark  
6 this as 19, Carrie.

7 All right. So, Mr. Day, {sic}  
8 what I've handed you is a document that on  
9 the first page says "Norfolk Southern Railway  
10 and Specialized Professional investment --  
11 Specialized Professional Services, Inc.,  
12 Environmental Response Emergency Agreement,  
13 8/15/2016."

14 Do you have that in front of  
15 you?

16 A. Yes.

17 Q. And do you recognize this as  
18 your agreement with Norfolk Southern --

19 A. This is --

20 Q. -- related to emergency  
21 response?

22 A. Yes.

23 Q. Okay. Has this agreement been  
24 modified since August 2016?

25 A. If it has, it's only been as

1     like subtle rates, maybe just adding some  
2     stuff that maybe wasn't previously in there.  
3     But that would have been the extent of any  
4     modifications that I'm aware of.

5             Q.        Okay. So if I understand what  
6     you're saying, it may have been modified with  
7     respect to particular rates for particular  
8     equipment or services, but the master  
9     agreement has not changed?

10            A.        Not to my knowledge.

11            Q.        Okay. If you look at the page  
12     that's 7000 on the bottom.

13            A.        Yes.

14            Q.        In the section titled  
15     "Emergency Work," it says, "The tasks to be  
16     performed by contractor on an emergency basis  
17     for a period not to exceed 72 hours from  
18     initial mobilization by railway, unless  
19     otherwise specified in the applicable service  
20     order, to mitigate a hazardous condition  
21     caused by the release of hazardous or  
22     nonhazardous substances into the environment,  
23     on or off railway's property, as requested  
24     and authorized by the engineer or other  
25     responsible official of railway."

1                   Sorry, I read a long definition  
2   there, but it's defining what emergency work  
3   means.

4                   Right?

5           A.       Uh-huh.

6           Q.       Yes?

7           A.       Yes.

8           Q.       And that's the work that's done  
9   in the first 72 hours from initial  
10  mobilization?

11          A.       As defined here, yes.

12          Q.       Okay. Was that -- has that  
13  been modified in any way that you're aware  
14  of?

15          A.       No.

16          Q.       Was there any special service  
17  order related to East Palestine that changed  
18  that definition of emergency work?

19          A.       No.

20          Q.       Okay. You arrived on-scene on  
21  Friday evening around 10 or 11.

22                   Does that sound right?

23          A.       Yes.

24          Q.       So the 72-hour period would  
25  have expired on Monday evening around 10 or

1 11?

2 A. Sounds right.

3 Q. Okay. If you flip to Exhibit A  
4 of this document, which is on page 16,  
5 there's a schedule of prices and conditions.

6 A. Yes.

7 Q. Do you see that?

8 A. Yes.

9 Q. And the actual SPSI rates have  
10 been redacted.

11 Correct?

12 A. Yes.

13 Q. But it's true that those  
14 emergency response rates listed at the  
15 beginning of this exhibit are higher per hour  
16 than the nonemergency hourly rates.

17 Right?

18 A. Yes.

19 Q. How much higher?

20 A. Not dramatic. I don't -- you  
21 know, I'd have to go back to the specific  
22 agreement to refresh myself.

23 Q. Okay.

24 A. They're not dramatically  
25 different.

1 Q. Okay. Can you give me a  
2 general, like a percentage? Is it time and a  
3 half kind of thing or two times?

4 A. No, probably more like 10,  
5 20 percent.

6 Q. Okay. That's something you  
7 could check?

8 A. I can check that, yes.

9 Q. And you are the one who signed  
10 this agreement.

11 Correct?

12 A. Yes.

13 Q. Now, if you turn to page 8 of  
14 this document, there's a section called  
15 Indemnification.

16 A. Yes.

17 Q. Have you read that section  
18 recently?

19 A. No.

20 Q. Did you read it -- have you  
21 read it since the beginning of this year?

22 A. No.

23 Q. Okay. Did you confer with a  
24 lawyer before signing this document?

25 A. No.

1 Q. If you look at page 8,  
2 Section 8.1(a) says, "Contractor shall  
3 indemnify and hold harmless the indemnified  
4 parties," and then there's lots of legal  
5 language there.

6 Do you see that?

7 A. Yes.

8 Q. And in this case, the  
9 "contractor" is you.

10 Right?

11 A. Yes.

12 Q. And the "indemnified parties"  
13 are Norfolk Southern and its related  
14 entities.

15 Right?

16 A. Yes.

17 Q. So this agreement, you are  
18 indemnifying and holding harmless Norfolk  
19 Southern.

20 Correct?

21 A. I'd have to reread this. I  
22 only -- can I read this for a minute?

23 Q. You're welcome to.

24 I'll also say that the -- just  
25 to be clear, Section D of that identifies the

1 terms "indemnified parties" and "indemnified  
2 party" to include Norfolk Southern and its  
3 affiliates.

4 Do you see that?

5 A. Okay.

6 Okay. I've caught -- I've read  
7 it.

8 Q. Okay. My question was, in this  
9 agreement, SPSI is indemnifying and holding  
10 harmless Norfolk Southern.

11 Correct?

12 A. In this agreement. And it  
13 hadn't been read since 2016, yes.

14 (McCarty Exhibit 20 marked for  
15 identification.)

16 QUESTIONS BY MS. HERLIHY:

17 Q. Okay. Let's move on to Tab 3,  
18 which will be Exhibit 20.

19 All right. Mr. McCarty, what  
20 you should have in front of you is what the  
21 court reporter has marked as Exhibit 20. It  
22 is an e-mail from David Schoendorfer to you  
23 and Chip Day.

24 Correct?

25 A. Yes.



1 Q. And it's dated February 6th,  
2 2:20 p.m.

3 Right?

4 A. Yes.

5 Q. 2:21 p.m., I guess.

6 A. Yeah.

7 Q. That's a couple hours before  
8 the vent and burn was initiated.

9 Correct?

10 A. Yes.

11 Q. And it attaches a hold harmless  
12 agreement.

13 Do you see that?

14 A. Yes.

15 Q. This one is not signed, but  
16 eventually you did sign this agreement.

17 Correct?

18 A. Yes.

19 Q. How did this agreement come  
20 about, and who requested that this agreement  
21 be entered into?

22 A. I did.

23 Q. Okay. And why did you request  
24 that?

25 A. Quite frankly, Jason Poe.

1 He -- his -- his prerequisite for providing  
2 his service was that Norfolk Southern would  
3 need to indemnify him. And that kind of  
4 grabbed my attention, like, you know, I  
5 probably signed something years ago, in  
6 whatever day, whatever year this would have  
7 been. And I said, Jason, that's a really  
8 good idea.

9 And I called David  
10 Schoendorfer. I said, Dave, Jason Poe is not  
11 going to do his service without something  
12 like that being signed. And, Dave, I mean,  
13 I -- I'm going to ask you to have Norfolk  
14 Southern do the same consideration for me and  
15 SRS.

16 So that's how it originated.

17 Q. When did you call David  
18 Schoendorfer and say that?

19 A. I'd have to look at my phone  
20 records. I don't recall.

21 Q. But it was after Jason Poe had  
22 been engaged and mobilized to do the vent and  
23 burn.

24 Right?

25 A. Yes.

1 Q. Okay. Because he wouldn't do  
2 the vent and burn without this kind of  
3 indemnification and hold harmless agreement?

4 A. Correct.

5 Q. Now, Mr. Poe sent you a  
6 proposed indemnification and hold harmless  
7 agreement.

8 Right?

9 A. I think he did.

10 Q. That's not the one that you  
11 ended up signing, though, with Norfolk  
12 Southern, is it?

13 A. No, Norfolk Southern generated  
14 this document.

15 Q. Okay. And did you have a  
16 lawyer review this document before you signed  
17 it?

18 A. I did not.

19 Q. Did you read and review the  
20 hold harmless agreement that Jason Poe shared  
21 with you and compare it to the one that you  
22 signed with Norfolk Southern?

23 A. I did not, because it ended up  
24 where Jason -- the original dispatch, the  
25 understanding was, I'm subcontracting SRS.

1 SRS is subcontracting ESI. And I'm still not  
2 100 percent sure, but I think ESI ended up  
3 direct contracting with Norfolk Southern. I  
4 think, but I don't know that with certainty.

5 Q. Okay. So my question was, did  
6 you read and review the hold harmless  
7 agreement that Jason Poe sent you and compare  
8 it to this agreement? That's Exhibit 20.

9 A. No, I didn't. I didn't really  
10 study his again. It was -- I didn't do a lot  
11 of e-mailing from the field.

12 Q. Okay. And did you have any  
13 conversations with Chip Day about a hold  
14 harmless agreement?

15 A. I had informed him that I had  
16 asked Norfolk Southern for this.

17 Q. Okay. So you had the  
18 discussion with Jason about a hold harmless  
19 agreement, and then you passed that on to  
20 Chip as well?

21 A. No. I let Dave Schoendorfer at  
22 Norfolk Southern know that Jason and ESI was  
23 going to need this.

24 And the next sentence to Dave  
25 was, Dave, I'm going to ask Norfolk Southern

1 for the same thing.

2 I didn't have a document to  
3 give to Norfolk Southern. I didn't have that  
4 kind of thing prepared, so Norfolk Southern's  
5 legal person prepared it.

6 Q. Why did you feel like in this  
7 case you needed this kind of agreement?

8 A. Well, as I suspected, and I  
9 just reread it since 2016 about five minutes  
10 ago, you know, there's language in here that  
11 says I could be on the hook for environmental  
12 pollution.

13 Well, we're getting ready to  
14 kind of -- we -- in our -- 99.99 percent of  
15 our jobs, we have no drips, no spills, no  
16 errors, and we purposely don't put things in  
17 the environment.

18 In this case, part of the  
19 tactics that was going to get authorized by  
20 our client in command was going to be to  
21 emergency de-inventory tank cars. And I just  
22 wanted to make sure that my employees and my  
23 company were protected from that, you know.

24 Q. Protected in case there was a  
25 claim or a lawsuit for --

1 A. Yes.

2 Q. Okay.

3 MR. HANSON: Again, let her --

4 THE WITNESS: I'm sorry.

5 MR. HANSON: -- finish her  
6 question.

7 QUESTIONS BY MS. HERLIHY:

8 Q. I can say it again.

9 You wanted your employees and  
10 yourself and your company to be protected in  
11 case there was a lawsuit?

12 A. Yes, ma'am.

13 Q. Had you had any discussions  
14 with anybody about a potential lawsuit at  
15 this point?

16 A. No.

17 Q. If you turn to the second page  
18 of that hold harmless agreement, I just want  
19 to ask you a couple things.

20 Realizing this is a, you know,  
21 a legal document, and if you don't know the  
22 answer, that's fine.

23 But in that first clause it  
24 says, "Whereas." It says, "Client has asked  
25 contractors to perform certain work for

1 client with regard to the requested tank car  
2 vent and burn project" --

3 A. Excuse me.

4 Q. -- "located at East Palestine,  
5 Ohio derailment site."

6 And when it says "certain  
7 work," was that something less than all of  
8 the work that you were doing there for  
9 Norfolk Southern, or was the idea to cover  
10 all of the work you were doing?

11 A. I don't know that that was ever  
12 defined.

13 Q. Okay. Did you feel, and do you  
14 feel today, that you're covered 100 percent  
15 by this agreement for all of the work that  
16 you did with respect to East Palestine for  
17 Norfolk Southern?

18 A. Yes, ma'am.

19 Q. Okay. And then if you go down  
20 to the section that's numbered 1, it says,  
21 "Indemnity and hold harmless."

22 About the middle of that  
23 paragraph, there's the words "willful  
24 misconduct of contractors."

25 Do you see that?

1           A.       I'm sorry, which paragraph are  
2   you on?

3           Q.       It's paragraph number 1.

4           A.       Oh. Okay. Yeah.

5           Q.       And about in the middle of that  
6   paragraph, it has the words "willful  
7   misconduct of contractors."

8           A.       Okay. I see that.

9           Q.       And does that indicate to you  
10   that even if you and your company, who are  
11   the contractors under this agreement, commit  
12   some willful misconduct, you are still  
13   indemnified and held harmless by Norfolk  
14   Southern for that?

15          A.       The way I would read this is  
16   if -- if for some -- you know, if there's  
17   anything that we would have done as a willful  
18   misconduct, then I'm reading this as -- that  
19   that's where maybe it wouldn't apply, right?  
20   Is that -- kind of how I understand how this  
21   was written.

22          Q.       Okay. What part of this  
23   language makes you think that's what that  
24   means?

25          A.       Let me reread the whole



1 paragraph.

2 Q. Sure.

3 A. Let me just look at the whole  
4 paragraph, top to bottom.

5 Huh. Well, I got to tell you,  
6 in all the contracts I've written in 35 years  
7 doing business, I must say I'm surprised at  
8 how that's worded.

9 But it appears that Norfolk  
10 Southern in this paragraph is, in fact,  
11 indemnifying us even if we would have done  
12 something willfully, misconduct. And, you  
13 know, that did not happen.

14 But the way this reads just  
15 surprised me, because that's pretty  
16 surprising.

17 Q. Same for me, which is why I  
18 asked you.

19 But having read that --

20 A. -- I read it, because I can  
21 tell you, I got this and kept moving. I kept  
22 working.

23 Q. Okay.

24 A. I have that faith in my client.

25 Q. Okay. But we -- again, we can

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1 agree that that language does appear to cover  
2 you for willful misconduct?

3 A. It appears that way.

4 Q. Okay. And it goes on in the  
5 final sentence to talk about attorneys' fees,  
6 that this indemnification applies to and  
7 includes, without limitation, to the payment  
8 of all penalties, fines, judgments, awards,  
9 decrees, attorneys' fees and related costs or  
10 expenses, and any reimbursements to  
11 contractors for all legal expenses and costs  
12 incurred by them.

13 Right?

14 A. That is how it reads, yes.

15 Q. Okay. And Norfolk Southern is,  
16 in fact, paying your attorneys' fees.

17 Correct?

18 A. Yes, ma'am.

19 Q. And any related costs that you  
20 have with respect to this litigation?

21 A. Yes, ma'am.

22 Q. And they paid your attorneys'  
23 fees with respect to the investigative  
24 hearing by the NTSB as well.

25 Correct?

1 A. Yes, ma'am.

2 Q. So you're not out of pocket any  
3 money as a result of this litigation.

4 Is that correct?

5 A. No, ma'am.

6 Q. Okay. They've covered it all?

7 A. Yes.

8 Q. Okay. Was SPSI a member of  
9 unified command?

10 A. No.

11 Q. And Oxy was not a member of  
12 unified command.

13 Correct?

14 A. I don't believe so.

15 Q. Do you have any reason to  
16 believe that they were?

17 A. I just know that Oxy had three  
18 folks in town. I was not privy to a lot of  
19 conversations at the command operation.

20 Q. Did you ever see -- did you  
21 ever go to a meeting of the unified command?

22 A. I went to what we called shift  
23 change briefings --

24 Q. Okay.

25 A. -- which was pretty much all

1 parties in the room. So there was a lot of  
2 folks there.

3 Q. Okay. And were folks from Oxy  
4 in that room?

5 A. I think they would have been,  
6 at least one or two briefings, I think, but I  
7 didn't exactly keep track of them.

8 Q. Okay. So you just don't know?

9 A. I'm not certain.

10 Q. Crossing off things because  
11 you've had a lot of questions asked of you.

12 Mr. Swanson, Trinity's counsel,  
13 showed you, I believe, the complaint against  
14 Trinity. And it's also against Oxy Vinyls.

15 Were you aware that Oxy Vinyls  
16 was sued by Norfolk Southern?

17 A. I think that had just been in a  
18 press release, yes.

19 Q. Okay. Do you understand the  
20 basis of Norfolk Southern's claims against  
21 Oxy?

22 A. I don't, until this was shared  
23 today. And honestly, I didn't read beyond  
24 the few lines that he asked me to read. So  
25 at this moment, no, I don't know.

1 Q. Okay. Do you take issue with  
2 anything that Oxy did with respect to the  
3 East Palestine train derailment?

4 MR. LEVINE: Objection.

5 THE WITNESS: Wow, that's a  
6 broad-brush statement, question.

7 Can you repeat? Just make sure  
8 I understand the question.

9 QUESTIONS BY MS. HERLIHY:

10 Q. Yeah. I'm wondering if you  
11 place blame or take issue with anything that  
12 Oxy did with respect to the train derailment.

13 A. Oh, I certainly --

14 MR. LEVINE: Same objection.

15 THE WITNESS: -- don't place  
16 blame.

17 QUESTIONS BY MS. HERLIHY:

18 Q. Okay.

19 A. I certainly don't place blame.

20 Q. Okay. Do you feel like Oxy did  
21 anything wrong?

22 A. Well, you've asked the  
23 question. I'm going to go on my 35 years of  
24 experience to share with you what I think Oxy  
25 could have done better.

1 Q. Please.

2 A. Empower the people that it  
3 sends to the sites.

4 Q. Okay. And what do you mean by  
5 that?

6 A. My experience with Oxy from  
7 scheduled transfer in Illinois years ago to  
8 Paulsboro, New Jersey, to East Palestine is  
9 such where when they send dignitaries out to  
10 the site for help and support, the common  
11 thread that I've personally observed is  
12 nobody's allowed to make a decision till  
13 talking to Dallas.

14 That's just -- that's a candid,  
15 honest answer to your question.

16 Q. Okay. And do you think that --  
17 well, let's talk about this derailment,  
18 because I'm really specific to this  
19 situation.

20 Do you think that changed the  
21 way you went about making decisions on the  
22 scene in East Palestine?

23 A. Well, to clarify, decisions  
24 really weren't ours to make, the word  
25 "decision."

1                   But, no, I think this -- just a  
2   disconnect of people here that included the  
3   strike team response guy that knows the  
4   tactics, knows the options, knows the risk.  
5   You've got a chemist here that may or may not  
6   have shared that he's not the actual chemist  
7   that makes vinyl, but certainly was sent  
8   there because he's a chemist that understands  
9   Oxy Vinyls is a VCM producer, yada yada.

10                   So again, we -- and again, take  
11   Oxy off the table. Chemical company X sends  
12   experts to the site to help.

13                   You know, that's just to share.  
14   You asked the question. That's one thing I  
15   think Oxy could do better at.

16           Q.       Okay. That's what I want to  
17   know.

18                   Are there other things you  
19   think Oxy could have or should have done  
20   differently with respect to East Palestine  
21   other than perhaps, I think you said,  
22   empowering the people it sends to the site?

23           A.       I think when we ask the  
24   question, if they're going to make a pretty  
25   strong assumption from Texas that says, we

1 just don't think it's polymerizing, but don't  
2 have any solutions to offer, it puts us in a  
3 box. It puts our back against the wall that  
4 we're back to our tactics and toolboxes.  
5 Okay. So they're believing this.

6 But we have eons of data from  
7 decades of training and decades and all these  
8 different chemical resources and their own  
9 employees that they sent here to help  
10 questioning the person on the end of the  
11 phone.

12 The person on the other end --  
13 if they feel so strongly in their minds it's  
14 not polymerizing, yet they don't have any  
15 answers to help us, our backs are still  
16 against the wall.

17 We have to do something to  
18 improve safety of this community.

19 So that's -- it's -- we respect  
20 all input from all of our customers. That's  
21 a sincere statement.

22 What could Oxy do better?  
23 Offer ideas. Offer tactical options. And  
24 that's another -- I mean, that's my answer.

25 Q. So you -- let's talk about a



1 couple of those things.

2 You heard clearly from Oxy that  
3 this wasn't polymerizing. Their perspective  
4 was, don't vent and burn this because it's  
5 not polymer -- don't do it because of  
6 polymerization.

7 That's what they said, right?

8 MR. LEVINE: Objection.

9 THE WITNESS: Well, whoever it  
10 was on the phone Sunday morning, their  
11 words were, we just don't think it's  
12 polymerizing.

13 QUESTIONS BY MS. HERLIHY:

14 Q. Okay. And didn't they also  
15 say, you guys are on the ground, if you're  
16 going to do a vent and burn, that's your  
17 decision, but don't do it because it's  
18 polymerizing?

19 Do you remember hearing that?

20 A. Maybe.

21 Q. Okay.

22 A. And I don't remember the exact  
23 conversation.

24 Q. Okay. Do you remember anything  
25 else from that conversation?

1           A.       A little bit of back-and-forth  
2     of, you know, how do you -- how -- we asked  
3     them, how do you stabilize with nitrogen, and  
4     they basically said, load the cars, put  
5     nitrogen on top.

6                     And again, that just --  
7     nitrogen is the first thing to leave the car  
8     on Friday night when the PRD started venting.

9                     So those kind of things were  
10    talked about, but -- it wasn't a very long  
11    call, as I recall. It wasn't that long of a  
12    phone call.

13           Q.       Okay. Do you -- have you, at  
14    any other time when you have been engaged by  
15    Oxy, looked to them for advice about how to  
16    actually respond to an emergency site?

17           A.       Yes.

18           Q.       In what situation?

19           A.       Well, Paulsboro, for example.  
20    We bounced that idea off of them about the  
21    acetone carrier solvent. And they did run it  
22    by their chemists, and they agreed that that  
23    did sound like a bona fide idea.

24                     So that was a Barry Lindley  
25    idea to the contractor, contractor to CSX,

1 CSX to Oxy, group think, buy in with Oxy  
2 chemists and execute.

3 Q. Okay. And maybe I'm asking my  
4 question badly.

5 But what I'm -- what I'm trying  
6 to get at is, are there situations where you,  
7 as the emergency response contractor, look to  
8 the chemical manufacturer to make an  
9 emergency response decision or  
10 recommendation?

11 A. Sometimes, and especially in a  
12 situation like this. If they're not agreeing  
13 with our next course of action that seemed  
14 logical to us as our last tool in the  
15 toolbox, they just didn't seem to have any  
16 other options.

17 Q. What it sounds like they said  
18 was it's not polymerizing, right?

19 That was their belief, right?

20 A. Yes.

21 Q. Okay. Do you think they should  
22 not have told you that without another  
23 solution?

24 A. Oh, no, no, no. I respected  
25 their input. And I appreciated their input.

1                   But then minutes later, Oxy  
2 employees that were sent there to help are  
3 questioning that message.

4           Q.       And I wanted to ask you about  
5 that, too, "minutes later."

6                   Because the three Oxy people  
7 didn't arrive on the scene until at least  
8 noontime on Sunday.

9           A.       Okay.

10          Q.       And this call was at 7 or  
11 8 a.m.

12          A.       Okay.

13          Q.       Okay. You seemed very clear  
14 about the "minutes later."

15          A.       Yeah, that's my -- what they  
16 call a brain fog on timeline.

17          Q.       Okay.

18          A.       But it was that morning.

19          Q.       Okay. But it wasn't like you  
20 got off the call and then immediately talked  
21 to the people who were in East Palestine.

22                   Right? Correct?

23          A.       In my memory I thought it was,  
24 but apparently not if there's a timeline that  
25 says it was a few-hour gap.

1           Q.       I mean, if the strike team  
2 leader and Steve Smith and Alex Torres were  
3 on the ground in East Palestine, why would  
4 you have been on the phone with the people in  
5 Dallas without them involved?

6                   MR. LEVINE:   Objection.

7                   THE WITNESS:   Well, that was a  
8 question we had, too. Why were they  
9 not invited on the call.

10       QUESTIONS BY MS. HERLIHY:

11           Q.       Okay. You thought they were on  
12 the ground there in East Palestine already?

13           A.       I just wondered why they  
14 weren't on the call.

15           Q.       Okay. You wondered why who  
16 wasn't on the call?

17           A.       The guys that asked us how the  
18 call went. What did they say on the call.  
19 It just surprised us. You guys weren't on  
20 the call?

21           Q.       Okay. So the three guys who  
22 were there at East Palestine asked you, how  
23 did that call go with Oxy?

24           A.       Yes.

25           Q.       And you thought they had been

1 on the call?

2 A. I assumed if they were part of  
3 the Oxy team that they would have been on the  
4 call.

5 Q. Okay. Later that day, you --  
6 maybe you don't know this. But are you aware  
7 that later that day there was an internal  
8 team call among the Oxy folks which was  
9 then -- afterwards, the results were reported  
10 back to you?

11 A. I'm not -- I'm not sure I am  
12 familiar with that.

13 What was that day?

14 Q. Okay. That's on Sunday, Sunday  
15 evening.

16 A. Okay.

17 Q. Do you remember speaking with  
18 Steve Smith following a call he had with the  
19 Oxy team on Sunday evening?

20 A. I don't know that I do.

21 Q. Okay. His testimony is he,  
22 after some discussions with you on the scene,  
23 he went back to talk to the Dallas team  
24 further, and came back and reiterated that  
25 this is not polymerization.

1 A. -- yeah.

2 Q. I'm sorry?

3 A. I'm sorry. I'm just getting  
4 tired. I'm sorry.

5 Q. And he came back and reiterated  
6 that this is not polymerization.

7 Do you remember that?

8 A. I don't.

9 Q. Okay. Do you have any reason  
10 to believe it didn't happen?

11 MR. LEVINE: Objection.

12 THE WITNESS: No, I -- Steve  
13 was -- I like -- I have no reason to  
14 believe Steve would lie.

15 QUESTIONS BY MS. HERLIHY:

16 Q. Okay. Okay.

17 I have ten minutes remaining.  
18 I'm happy to stop now. I don't think I'm  
19 going to need all my time tomorrow.

20 A. Like I say, this is your time.  
21 I'm -- I mean, I'm --

22 Q. I know you're getting tired.  
23 We're all getting tired. It's -- whatever.

24 A. I just don't -- I don't mean to  
25 cut your questions off. I apologize.

1 Q. I understand. It's hard.

2 We can keep going for the ten  
3 minutes. I'm probably going to have more  
4 tomorrow. So we can either break now or --  
5 it's up to you guys.

6 A. That's your decision. I mean,  
7 I --

8 MR. HANSON: Why don't we wrap  
9 it up for tonight.

10 MS. HERLIHY: That's fine.

11 VIDEOGRAPHER: Then we are off  
12 the record at 6:03.

13 (Off the record at 6:03 p.m.)

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CERTIFICATE

I, CARRIE A. CAMPBELL, Registered Diplomat Reporter, Certified Realtime Reporter and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, John Andrew McCarty, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

---

CARRIE A. CAMPBELL,  
NCRA Registered Diplomat Reporter  
Certified Realtime Reporter  
California Certified Shorthand  
Reporter #13921  
Missouri Certified Court Reporter #859  
Illinois Certified Shorthand Reporter  
#084-004229  
Texas Certified Shorthand Reporter #9328  
Kansas Certified Court Reporter #1715  
New Jersey Certified Court Reporter  
#30XI00242600  
Louisiana Certified Court Reporter  
#2021012  
Notary Public  
Dated: January 25, 2024

1 INSTRUCTIONS TO WITNESS

2 DATE: January 25, 2024

3 Please read your deposition over  
4 carefully and make any necessary corrections.  
5 You should state the reason in the  
6 appropriate space on the errata sheet for any  
7 corrections that are made.

8 After doing so, please sign the  
9 errata sheet and date it. You are signing  
10 same subject to the changes you have noted on  
11 the errata sheet, which will be attached to  
12 your deposition.

13 It is imperative that you return  
14 the original errata sheet to the deposing  
15 attorney within thirty (30) days of receipt  
16 of the deposition transcript by you. If you  
17 fail to do so, the deposition transcript may  
18 be deemed to be accurate and may be used in  
19 court.

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25

1 ACKNOWLEDGMENT OF DEPONENT

2  
3  
4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the foregoing  
6 pages and that the same is a correct  
7 transcription of the answers given by me to  
8 the questions therein propounded, except for  
9 the corrections or changes in form or  
10 substance, if any, noted in the attached  
11 Errata Sheet.  
12

13 \_\_\_\_\_  
14 John Andrew McCarty DATE

15 Subscribed and sworn to before me this  
16 \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
17 My commission expires: \_\_\_\_\_  
18

19 Notary Public  
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Confidential Pursuant to Protective Order

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ERRATA

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22 Subscribed and sworn to before me this

23 \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

24 My commission expires: \_\_\_\_\_

25 Notary Public

Confidential Pursuant to Protective Order

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2			LAWYER'S NOTES
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John Andrew McCarty

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: EAST PALESTINE ) CASE NO.  
5 TRAIN DERAILMENT ) 4:23-CV-00242-BYP  
6 ) JUDGE BENITA Y. PEARSON

7 THURSDAY, JANUARY 25, 2024

8 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

9 - - -

10 Videotaped deposition of John  
11 Andrew McCarty, Volume II, in his personal  
12 capacity and as 30(b)(6) designee for  
13 Specialized Professional Services, Inc., held  
14 at the offices of Dentons Cohen and Grigsby,  
15 625 Liberty Avenue, Fifth Floor, Pittsburgh,  
16 Pennsylvania, commencing at 9:03 a.m.  
17 Eastern, on the above date, before Carrie A.  
18 Campbell, Registered Diplomate Reporter,  
19 Certified Realtime Reporter, Illinois,  
20 California & Texas Certified Shorthand  
21 Reporter, Missouri, Kansas, Louisiana & New  
22 Jersey Certified Court Reporter.

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21 MICHAEL FRONZAGLIA, trial  
22 technician, Precision Trial Solutions

23 V I D E O G R A P H E R :  
24 CHARLES STOCKHAUSEN,  
25 Golkow Litigation Services

- - -



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John Andrew McCarty

1 VIDEOPHOTOGRAPHER: We are now on  
2 the record. My name is Charles  
3 Stockhausen. I am the videographer  
4 for Golkow Litigation Services.

5 Today's date is Thursday,  
6 January 25, 2024, and the time is  
7 9:03 a.m.

8 This video deposition is being  
9 held at 625 Liberty Avenue, Fifth  
10 Floor, Pittsburgh, Pennsylvania 15222,  
11 In Re of East Palestine Train  
12 Derailment, for the United States  
13 District Court, Northern District of  
14 Ohio, Eastern Division.

15 The deponent is Drew McCarty.

16 Counsel will be noted on the  
17 stenographic record.

18 And the court reporter is  
19 Carrie Campbell. She will now swear  
20 in the witness.

21 JOHN ANDREW MCCARTY,  
22 of lawful age, having been first duly sworn  
23 to tell the truth, the whole truth and  
24 nothing but the truth, deposes and says on  
25 behalf of the Plaintiffs, as follows:

1 MR. HANSON: Before we get  
2 started with the questioning, I just  
3 wanted to put on the record that this  
4 is the second day of Mr. McCarty's  
5 sort of combined individual and  
6 30(b)(6) deposition. We're not --  
7 since we are not making any  
8 distinction between him in his  
9 individual capacity or his corporate  
10 capacity, I think we can just roll  
11 along as we were before unless there's  
12 an objection from anyone.

13 MR. GOMEZ: No objection.

14 MS. HERLIHY: No objection.  
15 And with the understanding that the  
16 stipulations and discussions we put on  
17 the record at the beginning of  
18 yesterday apply into today.

19 MR. HANSON: Absolutely.

20 MS. HERLIHY: Great.

21 DIRECT EXAMINATION (continued)

22 QUESTIONS BY MS. HERLIHY:

23 Q. Good morning, Mr. McCarty.

24 A. Good morning.

25 Q. Welcome to day 2.

1 I have tried to narrow down  
2 what I want to ask you, and so I'll be  
3 jumping around a little bit. I apologize.

4 I neglected to ask you  
5 yesterday when we were talking about  
6 preparations that you did for the NTSB  
7 interview and then the hearing what you did  
8 to prepare for your deposition today.

9 So could you describe to me  
10 what you did to prepare for -- I should say,  
11 for your deposition yesterday and today?

12 A. Just pretty much met here in  
13 this room with Morgan and Lexie and Noah and  
14 Ben and a couple of the other folks from  
15 WilmerHale on cyber connections.

16 Pretty much it.

17 Q. Okay. Was there anyone other  
18 than lawyers from WilmerHale and/or Dentons  
19 involved in that meeting?

20 A. No.

21 Q. Was it a single meeting or more  
22 than one?

23 A. Just a single-day meeting. It  
24 was five or six hours, I guess.

25 Q. Okay. And when was that?

1           A.       This week, Tuesday.

2           Q.       Okay. Outside of meeting with  
3       counsel for Norfolk Southern and your own  
4       counsel, did you speak with anyone in  
5       preparation for your deposition?

6           A.       No.

7           Q.       Did you review any documents in  
8       preparation for your deposition?

9           A.       Yes. Lexie had sent me  
10       something. I forget what she sent me, but it  
11       was an e-mail from Lexie sent to me last week  
12       or so, and I looked at it Tuesday evening.

13          Q.       Okay. And was that something  
14       you used to refresh your memory for the  
15       deposition?

16          A.       I guess -- not so -- well, I  
17       guess yes, indirectly. I don't remember what  
18       it was, to be honest with you. I don't  
19       remember what it was.

20          Q.       Okay. You have no recollection  
21       of the topic?

22          A.       At this moment, no, I don't.

23          Q.       Okay. Between yesterday and  
24       today, did you do anything to prepare for  
25       your deposition?

1 A. Today?

2 Q. Yes.

3 A. Yes, ma'am. Last night I kind  
4 of did some homework on what I promised  
5 you-all I would.

6 Q. Okay. I appreciate that.

7 Did you do that on your own --

8 A. Yes.

9 Q. -- or with -- okay.

10 And did you meet with anybody  
11 between yesterday and today --

12 A. No.

13 Q. -- to prepare for your  
14 deposition?

15 A. No.

16 Q. Well, let's talk about the  
17 homework you did.

18 What topics did you do homework  
19 on last night?

20 A. Someone had asked me yesterday  
21 about gross sales. That number was 157  
22 million in 2023.

23 Q. So that's from February 3rd  
24 through the end of 2023?

25 A. Yeah, that was our -- what we

1       could call final billing for 2023 for that  
2       project for Norfolk Southern.

3               Q.       Okay. And are you continuing  
4       to work on that project in 2024?

5               A.       Yes, we're still there.

6               Q.       Okay. Have you sent any bills  
7       for 2024 yet?

8               A.       Most likely, but I didn't  
9       explore that last night.

10              Q.       Okay. Has that 157 million  
11       that you billed to Norfolk Southern been  
12       paid?

13              A.       I didn't think to ask the CFO  
14       that. Predominantly, yes, Norfolk Southern  
15       has been good about helping us keep up with  
16       cash flow. Yes, they've been very good about  
17       that.

18              Q.       Okay. Does that 157 million  
19       include time that you or your employees spent  
20       in hearings or in interviews with the NTSB?

21              A.       Yes. Some of that would  
22       include that.

23              Q.       Okay. So you would be paid on  
24       an hourly basis for that time spent with the  
25       NTSB?

1           A.       Yes, ma'am.

2           Q.       What's your hourly rate, you  
3 personally, your hourly rate for NTSB-related  
4 activities?

5           A.       I honestly don't remember. The  
6 2016 rates, I think, have gone up some since  
7 2016, but it's in the vicinity of 100 and  
8 something an hour.

9           Q.       Okay. And is there a different  
10 rate for other people at SPSI, like Ryan  
11 Tokarski, for instance?

12          A.       Yes, ma'am.

13          Q.       And what would his rate be  
14 compared to yours?

15          A.       Probably in the vicinity of 80  
16 to a hundred dollars an hour, something like  
17 that.

18          Q.       Okay. And then are you also  
19 paid for your time in deposition today?

20          A.       Yes.

21          Q.       And is that at the 100 -- I  
22 can't remember what you said. 100 and --

23          A.       Yeah, whatever the  
24 nonemergency -- that would be that  
25 nonemergency application.



1 Q. Nonemergency hourly rate?

2 A. Yes.

3 Q. Okay. And so you would be paid  
4 for prep time and deposition time by Norfolk  
5 Southern?

6 A. Yes.

7 Q. What other homework did you do  
8 last night?

9 A. There was three assignments.  
10 What were they?

11 The gross sales. Oh, the delta  
12 from -- on the rate schedule, talking about  
13 rates. Someone had asked, what is the --  
14 kind of the percentage delta from  
15 nonemergency to emergency or vice versa.

16 The lady that helps me do --  
17 does our billing, we just took ten minutes  
18 together on the phone and took a snapshot of  
19 a few rates. And I chuckle because it's --  
20 it was surprising to me. So one of them was  
21 actually just one dollar difference. Other  
22 ones were like a 12 percent.

23 So a safe, broad -- we didn't  
24 go through every single rate, but generally  
25 speaking, our emergency to nonemergency

1       predominantly looks at labor.

2                   The large -- the majority of  
3       equipment remains unchanged for the most  
4       part. But it was probably a range from 5  
5       percent to 15 percent, is a safe range to  
6       share.

7           Q.       Okay. When we looked at that  
8       document yesterday, those rates were  
9       redacted, as you recall.

10                   Correct?

11           A.       Yes.

12           Q.       Were the rates that were in  
13       that 2016 document still current?

14           A.       No, they would probably --  
15       there would have been increases between then  
16       and now.

17           Q.       Okay. And do you have  
18       documentation that would show what the  
19       increases are between then and now on your  
20       rates with Norfolk Southern?

21           A.       I think so. I think -- my --  
22       the lady that helps me with our billing,  
23       Penny is her name, she would probably have  
24       that, yes.

25                   MR. HANSON: Counsel, if

John Andrew McCarty

1           there's no objection, can we designate  
2           the discussion of the particularized  
3           rates that we charge as confidential?

4                     This is a competitive industry,  
5           and the rates that our company  
6           charges, we prefer not to be a public  
7           record.

8                     MS. HERLIHY: I mean, I don't  
9           think we've talked about any  
10          particular rates other than, I  
11          suppose, for the NTSB hearing.

12                    MR. HANSON: Well, that's his  
13          non --

14                    MS. HERLIHY: Okay.

15                    MR. HANSON: He's described  
16          that as his nonemergency rates. So  
17          that's his -- would be his standard  
18          rate. And we would just prefer that  
19          those particular parts be  
20          confidential.

21                    MS. HERLIHY: I don't have any  
22          problem with that.

23                    Do others?

24                    MR. GOMEZ: No.

25                    MS. HERLIHY: I mean, I'd like

1 to --

2 MR. SWANSON: Not for now. I  
3 mean, down the road we might have to  
4 revisit it, but if you want to mark it  
5 as confidential in the transcript,  
6 that's fine with Trinity.

7 MR. HANSON: Thank you. We  
8 appreciate it.

9 QUESTIONS BY MS. HERLIHY:

10 Q. Okay. And just to go back so I  
11 understand, what did you say your  
12 nonemergency hourly rate is?

13 A. Again, ma'am, for the record, I  
14 don't exactly remember.

15 Q. Okay.

16 A. And not all of our clients get  
17 the same rates. These would be kind of lower  
18 rates for Norfolk Southern and other folks  
19 because, you know, we have a -- kind of a --  
20 kind of an every year local, backyard  
21 presence with Norfolk Southern. So we have a  
22 lot of activity with Norfolk Southern by our  
23 regional presence to their railroads.

24 So I don't remember exactly the  
25 rates.

1 Q. Okay. And would you say the  
2 same of your emergency hourly rate?

3 A. Yes.

4 Q. Do you not remember that?

5 A. No, I don't remember all our  
6 rates.

7 Q. Okay. After discussing last  
8 night with Penny, do you remember what your  
9 personal, either nonemergency or emergency,  
10 hourly rate is?

11 A. Honestly, ma'am, I don't.

12 Q. Okay. So --

13 A. We snapshotted three or four  
14 rates, and we did the quick percentages, and  
15 that's all we did.

16 Q. Okay. So the best you can tell  
17 me right now is that the difference between  
18 emergency rates and nonemergency rates is  
19 between 5 and 15 percent?

20 A. We feel it's a safe, accurate  
21 report today, yes.

22 Q. Uh-huh.

23 A. On the Norfolk Southern rate  
24 schedule.

25 Q. Understood.

1                   What was the third homework  
2   assignment you followed up on last night?

3           A.       I -- the one document somebody  
4   prepared that I had e-mailed to me from Mike  
5   Kline. And it obviously took me by surprise  
6   that one of our guys may have climbed on that  
7   one car to get a point and shoot.

8                   So I took it upon myself to  
9   call every single one of our field  
10   supervisors and interviewed everybody, from  
11   day shift to night shift, and asked them very  
12   specifically, did anybody ever climb on that  
13   car and do this?

14                  And the answer was a resounding  
15   no from all of them. So I'm not sure how  
16   that got misconstrued and put on paper.

17           Q.       Okay. So, first of all, you  
18   mentioned the e-mail from Mike Kline.

19                   Did you mean an e-mail from  
20   Mike Burket?

21           A.       I'm sorry, Mike Burket. Thank  
22   you. Mike Burket.

23           Q.       And tell me each of the field  
24   supervisors that you called last night.

25           A.       Okay. Yeah, that's right, that

1 was another -- you were looking for the name.

2 So D'Shawn Herrera, we  
3 mentioned him yesterday.

4 Blaise MacDonald. Connor  
5 Fritz.

6 Night shift safety guy, Greg  
7 Palmer.

8 Alex Klepsic? Did I mention  
9 Alex Klepsic?

10 Q. Not yet.

11 A. Okay. Alex Klepsic.

12 And a couple other technicians,  
13 Charles Filby and Max Kalchthaler. And I  
14 don't know -- I can't spell Max's last name  
15 very well, Kalchthaler.

16 Q. Anyone else?

17 A. No, those were our employees  
18 that would have been involved in the  
19 collection of those thermometer readings.

20 Q. Okay. And you didn't mention  
21 Mike Burket, but did you talk with him last  
22 night as well?

23 A. I did. I also talked to Mike  
24 Burket and asked him to remind me, like, hey,  
25 you sent this me e-mail on the 23rd. Did

1 Norfolk Southern ask for that? Did I ask for  
2 that?

3 And he reminded me, I did ask  
4 for it. And I had asked for him to please --  
5 he said, Drew, you asked me to kind of put  
6 together notes because you had this NTSB  
7 thing, like the thing I was trying to get  
8 ready for.

9 As I admitted yesterday, I  
10 never saw it. He didn't get it done in time  
11 for that hearing and, quite frankly, after  
12 the fact, I kept moving. I went right back  
13 in the field.

14 So that's why I was a little  
15 surprised when I saw it yesterday.

16 Q. So just to make sure I  
17 understand.

18 Before you were having the  
19 interview with the NTSB, you asked Mike  
20 Burket to gather some information for you?

21 A. Yes.

22 Q. And he didn't get it to you in  
23 time?

24 A. Correct.

25 Q. What information did you ask



1 him to gather for you?

2 A. It was a broad-brush question.

3 I just -- again, I had never been interviewed  
4 by the NTSB ever in my career. That was a  
5 first for me, so I had no idea how that  
6 process even worked.

7 I was simply trying to ask  
8 Mike, because he was helping me with notes  
9 among his safety duties, hey, can you put it  
10 together for me, because I don't know what  
11 they're going to ask me.

12 It ended up I didn't have it  
13 for that interview anyway.

14 Q. But what specifically did you  
15 ask him to gather for you, I guess is my  
16 question?

17 A. Just whatever general notes --  
18 he summarized the general notes in that Word  
19 document.

20 Q. What general notes did he tell  
21 you he used to summarize in that document?

22 A. Would have been -- the document  
23 pretty much summarized the culmination of  
24 relayed information from the field to that  
25 document.

1           Q.       I'm actually trying to get at,  
2       like, what notes did Mike Burket go back to  
3       look at to create that.

4                   Do you know?

5           A.       I believe whatever was scanned  
6       and submitted. Y'all have whatever notes  
7       were available, and it wasn't very much. I  
8       mean, it was -- a lot of this was verbal  
9       relay, and that's where I -- you know, I  
10      can't -- I believe that's probably what  
11      happened here on that particular line. It  
12      was probably a verbal miscommunication  
13      relayed by people.

14                   But I can tell you that every  
15      one of those guys, none of them crawled on  
16      that car.

17          Q.       Okay. And so the issue that  
18      you were specifically following up with those  
19      guys about last night was the reading that  
20      was on the pressure plate on OCPX80235.

21                   Is that correct?

22          A.       The -- that was one. I had  
23      three issues. I asked him three questions.  
24      That was certainly a big one.

25                   Secondly, I had them put it in

1       their words. I didn't bait them. I said,  
2       was there any point at any of the cars that  
3       you found tears in jackets, holes in the  
4       cars, where you felt comfortable that you  
5       ever got a laser thermometer to the tank  
6       shell. And they were all an absolute no.

7                       That was the other question.

8                       The other -- I think down the  
9       page there, there was something in the  
10      western-most car where somebody'd reported  
11      finding two more spots. That was the third  
12      thing I asked them.

13                      And I did, in fact, find that  
14      one person found, like, as they described,  
15      golf-ball-sized holes. But again, the same  
16      report.

17                      What's not in there that they  
18      had -- again, the same -- the reason they  
19      never got to me, because there was no change  
20      in what had been reported to me in that they  
21      didn't feel that they got contact with the  
22      tank.

23              Q.       Okay. So you're talking about  
24      three things you raised with them. The  
25      pressure plate issue, excuse me, that they

1 never thought they got good readings, you're  
2 saying?

3 A. Correct.

4 Q. And that they only went through  
5 golf-ball-sized holes in the OCPX80370 car?

6 A. That's the one on the west.

7 Q. Correct.

8 A. And, again, I can't remember  
9 what was written there, but it was in the  
10 vicinity of the body bolsters they described.  
11 One guy described a golf-ball-sized hole.  
12 Another guy might have grabbed a little crack  
13 in the jacket.

14 So there was -- excuse me. The  
15 consistent story out of all the guys is they  
16 never had any good gaps to get to the tank  
17 shell, other than on that car where I took my  
18 gloved hand off -- I took my glove off my  
19 hand, put the back of my hand on the car on  
20 the bare spot that I found, and it was too  
21 hot to keep my hand on the car.

22 Q. Okay. Did Mike Burket give you  
23 any explanation as to why he didn't note  
24 anywhere on this document, which was  
25 previously marked as Exhibit 18, that there

1 was any concern about the reliability of the  
2 temperatures?

3 A. I'm sorry, I was looking for  
4 this document.

5 What was your --

6 Q. Okay. You're welcome to look  
7 at it.

8 A. What was your question? I'm  
9 sorry.

10 Q. It's number 18, if you want to  
11 take a look at it.

12 A. Yeah, what was your question --  
13 I'm sorry, what was your --

14 Q. My question was, did Mike  
15 Burket give you any explanation as to why he  
16 didn't note anywhere on this Exhibit 18  
17 document that there was any concern by SPSI  
18 about the reliability of the temperatures?

19 A. No. I had simply asked him to  
20 summarize the notes that were already out  
21 there with Norfolk Southern since the evening  
22 of the 5th.

23 Q. Okay. So based on what you  
24 talked with Mike Burket about, you believe  
25 there is a written note somewhere in SPSI's

1 files that reflects all of the statements in  
2 Exhibit 18?

3 MR. LEVINE: Objection.

4 THE WITNESS: Either a written  
5 note or his perception of a relayed  
6 verbal communication --

7 QUESTIONS BY MS. HERLIHY:

8 Q. Okay.

9 A. -- would be my honest answer to  
10 that.

11 Q. Okay. And when did Mike Burket  
12 indicate to you that he prepared this  
13 document that's dated 2/5/23?

14 A. He didn't specifically indicate  
15 that, and I didn't think to ask him.

16 Q. Okay. All right. In the  
17 interest of time, I'm going to move on from  
18 that. But others may have some questions, so  
19 you might want to keep Exhibit 18 nearby.

20 A. Okay.

21 Q. We may have covered this  
22 yesterday, but I'm not 100 percent sure, so I  
23 want to confirm.

24 I know you didn't take any  
25 notes memorializing your discussions with the

1 incident command or with Norfolk Southern.

2 Correct?

3 A. Correct.

4 Q. Are you aware of anyone at SPSI  
5 doing that?

6 A. I don't know.

7 Q. Okay. You haven't seen any  
8 notes by anyone on your team that reflect  
9 conversations with incident command or  
10 Norfolk Southern?

11 A. Not that I can recall.

12 Q. Okay. You were at the hearing  
13 in June. We already talked about the NTSB  
14 hearing at which you testified.

15 Correct?

16 A. Yes.

17 Q. And you heard Chief Drabick say  
18 that Norfolk Southern never informed him at  
19 any point that they had spoken to Oxy Vinyls  
20 and that Oxy Vinyls did not believe  
21 polymerization was occurring.

22 Right?

23 A. I heard Mr. Drabick's  
24 testimony.

25 Q. Okay. Do you have any reason

1 to disagree with what he said?

2 A. No. I mean, I witnessed his  
3 testimony, and I was not aware of that until  
4 that testimony, so I have no reason to doubt  
5 Chief --

6 Q. Did you believe, before you  
7 heard that testimony, that Norfolk Southern  
8 had passed on to Oxy Vinyls -- I'm sorry, let  
9 me start over again.

10 Did you believe, before you  
11 heard Chief Drabick say that at the hearing,  
12 that Norfolk Southern had, in fact, passed on  
13 to Chief Drabick that Oxy Vinyls didn't  
14 believe polymerization was occurring?

15 A. I never had a belief one way or  
16 the other. I wasn't involved in those  
17 communications.

18 Q. Okay. Did you make sure that  
19 Norfolk Southern knew that Oxy Vinyls didn't  
20 believe polymerization was occurring?

21 A. Yes, I shared that phone call  
22 from the -- from the whole rental car phone  
23 call. Norfolk Southern's HAZMAT staff knew  
24 that phone call and what the folks in Dallas  
25 had said.



1           Q.       You just don't know what they  
2       did with that information afterwards?

3           A.       That's correct.

4           Q.       Okay. And you didn't share it  
5       with Chief Drabick.

6                    Correct?

7           A.       No. I -- I was -- my role  
8       was -- I'm --

9           Q.       Right.

10          A.       -- for Norfolk Southern.  
11       Norfolk Southern is dealing with command.

12          Q.       Got it.

13                   Which means you also didn't  
14       share it with Governor DeWine.

15                   Right?

16          A.       No.

17          Q.       Or with Governor Shapiro?

18          A.       No.

19          Q.       Or with anyone at the  
20       Pennsylvania Department of Environmental  
21       Protection?

22          A.       No.

23          Q.       Or with the Ohio EPA?

24          A.       No.

25          Q.       Or with the US EPA?

1 A. No.

2 Q. Or with the National Guard?

3 A. No.

4 Q. Or with anyone at NS, other  
5 than the people we talked about yesterday?

6 A. No.

7 Q. Like, for instance, Alan Shaw?

8 A. No.

9 Q. Okay. Did you share that  
10 information from Oxy with anyone other than  
11 with Norfolk Southern's HAZMAT people?

12 A. Well, Chip Day, who was in the  
13 car. The rental car people, me, Chip --

14 Q. Sure.

15 A. No.

16 Q. I mean, Chip heard it himself.

17 Correct?

18 A. Yes.

19 Q. Okay. We looked yesterday at  
20 an exhibit that Chip Day sent you following  
21 the vent and burn, and it had some real  
22 grainy photographs that he indicated he  
23 thought were polymer.

24 Do you remember that exhibit?

25 A. Yes, ma'am.

1           Q.       Are you aware of any testing  
2       that was done related to any of the  
3       substances in the pictures that Chip Day sent  
4       you?

5           A.       I am -- I'm aware of the NTSB  
6       lab testing that was done as part of their  
7       investigation, yes.

8           Q.       Okay. And what do you know  
9       about the results of that lab testing?

10          A.       I just saw the results, but  
11       I have -- frankly, I haven't studied them.  
12       I -- and just to clarify your question --

13          Q.       Sure.

14          A.       -- and to clarify what I can  
15       say I'm not certain of is what exactly was  
16       sampled. I can't say that anybody crawled in  
17       the tank and grabbed stuff from inside the  
18       tank.

19                    So I think what was sampled,  
20       I -- you know, I can't speak to what was  
21       sampled.

22          Q.       Okay. But you indicated that  
23       you were aware that the NTSB did lab testing  
24       of some materials that, I believe, you  
25       believe they were tested for PVC -- let me

1 say this differently.

2 Are you aware of any findings  
3 that there was actually PVC in or around the  
4 tank cars following the vent and burn?

5 A. So my understanding is, as part  
6 of the investigation, that NTSB asked Oxy to  
7 grab samples. We -- actually, Mike Kline  
8 assisted that process, I think, from a safety  
9 assistant.

10 But again, exactly what was  
11 sampled, I wasn't there to witness it. The  
12 results that I read indicated that there was  
13 no evidence of polymerization.

14 Q. You recall reading a report  
15 that said that?

16 A. That was in the NTSB draft data  
17 in early June, prior to the hearings. I was  
18 surprised by that, but that's all I can state  
19 at this point. I was surprised by that.

20 Q. Was there any other testing  
21 done that you're aware of?

22 A. Not that I'm aware of.

23 Q. Okay. At some point the VCM  
24 cars undergo a purging.

25 Is that correct?

1           A.       In this case, they were  
2       assessed after the vent and burn, and the air  
3       monitoring data had already been -- the  
4       inside of the cars had been burned out and  
5       naturally ventilated, so there was no need to  
6       do any technical follow-up with them.

7           Q.       Okay. So they weren't -- they  
8       were not purged by SPSI after the vent and  
9       burn?

10          A.       That is correct.

11          Q.       Was there the opportunity to  
12       take samples from the interior of those cars  
13       at that time following the vent and burn?

14          A.       Well, the NTSB immediately put  
15       them on hold, so nobody was allowed to touch  
16       the cars.

17          Q.       Okay. So SPSI was not  
18       permitted to do that?

19          A.       We were not permitted to do  
20       anything without NTSB directing us to do it.

21          Q.       So at least as far as SPI --  
22       SPSI goes, you did not do any testing or  
23       analysis of any residue of the VCM cars  
24       following the vent and burn to determine if  
25       there was PVC?

John Andrew McCarty

1           A.       No, we were never asked or  
2       directed to do that. And again, because of  
3       the NTSB/FRA hold -- it was both agencies or  
4       one. Whichever agency said, these cars are  
5       not to be touched, we didn't touch the cars.

6                       (McCarty Exhibit 21 marked for  
7       identification.)

8       QUESTIONS BY MS. HERLIHY:

9           Q.       Okay. Mr. McCarty, the court  
10      reporter has handed you a document that we  
11      will mark as Exhibit 21.

12                   And I'll represent for the  
13      record this is NS-CA-003481989, and it is a  
14      text message between you and Paul Williams.

15                   Right?

16           A.       Yes.

17           Q.       And who is Paul Williams?

18           A.       Paul Williams is one of the  
19      Norfolk Southern what I'll call senior HAZMAT  
20      manager. He's one of the folks on their  
21      staff.

22           Q.       And if you look on the second  
23      page of this document, it says from Paul  
24      Williams, "Oxy will be getting back to you  
25      tonight after they meet with corporate.

1 Please give me a quick call after."

2 Do you see that?

3 A. Yes.

4 Q. And you said okay?

5 A. I see it.

6 Q. Yesterday we talked about  
7 whether you remembered there being a  
8 conversation with the Oxy team on-site about  
9 having to go and speak with Dallas and then  
10 come back and talk to you more about  
11 polymerization.

12 Does this refresh your memory  
13 about that at all?

14 A. Well, in the phrasing of your  
15 question, it doesn't surprise me. You know,  
16 after the -- we had that conference -- the  
17 call in the car, the rental car, and then the  
18 discussion in our ops trailer with the three  
19 fellows from Oxy, that didn't surprise me one  
20 bit if they were going to call Dallas and  
21 have a chat with Dallas. That kind of tracks  
22 with expectation and memory, I guess, rough  
23 memory.

24 I don't remember specifically  
25 this text trail until, you know, this process

1       here, this here. So I guess I'm --

2               Q.       Well, my question -- yesterday  
3       I was trying to see if you remembered having  
4       a conversation with the three gentlemen from  
5       Oxy on Sunday evening after they had talked  
6       with Dallas, particular to the issue of  
7       polymerization.

8               A.       I don't remember meeting with  
9       them, no.

10              Q.       Okay.

11              A.       I mean, if something was said,  
12       it would have been said in passing. And  
13       if -- and if they just confirmed what they  
14       said in the rental car hours later, it  
15       didn't -- I mean, it just is them being a  
16       mouthpiece for Dallas, is how I might have  
17       interpreted any such short conversation in  
18       passing.

19              Q.       Okay. But you just don't --

20              A.       I don't remember a meeting. I  
21       don't even remember -- I don't even remember  
22       the conversation. It just -- if it was a  
23       conversation, it would have been a very quick  
24       conversation.

25              Q.       Okay. So fair to say you just



1 don't recall whether there was that  
2 conversation on Sunday evening?

3 A. I honestly don't remember a  
4 conversation.

5 Q. You had a lot going on. I get  
6 it.

7 A. Amen.

8 Q. I get it.

9 (McCarty Exhibit 22 marked for  
10 identification.)

11 QUESTIONS BY MS. HERLIHY:

12 Q. Okay. Mr. McCarty, I'm giving  
13 you a document that's marked Exhibit 22.  
14 It's titled "Incident Status Report,  
15 February 5, 2023."

16 A. Okay.

17 Q. This is an incident status  
18 report, I believe, prepared by Norfolk  
19 Southern. And my question is whether you  
20 have any involvement in preparing the  
21 incident status report.

22 A. No, ma'am.

23 Q. Okay. If you could turn to  
24 page 4 of 7 on this document, there's a  
25 section that says, "Site Activities Planned

1 for the Next Operating Period" at the bottom.

2 A. Okay.

3 Q. Are you with me?

4 A. Yes.

5 Q. And that first bullet point  
6 says -- so this is -- again, it's site  
7 activities that are being planned for the  
8 next operating period.

9 It says, "Meeting with local  
10 officials to explain potentials with VCM cars  
11 and changing conditions warranting vent and  
12 burn operational tactic."

13 Do you see that?

14 A. Yes.

15 Q. What changing conditions were  
16 occurring on the site with respect to the VCM  
17 cars on Sunday, the 5th?

18 A. I don't know the time in which  
19 this was prepared or who prepared it, but  
20 that would have been the western-most car  
21 burning itself out from the protective  
22 housing, pressure relief device, two liquid  
23 lines, vapor line. The service equipment had  
24 been burning, leaking and burning, since  
25 Friday night and had burned itself out.

1                   Upon the assessment with myself  
2     and Charles Filby, found it to be not  
3     burning, no audible hiss, leaking, with any  
4     pressure behind any -- in other words -- in  
5     other words, why would the -- our assessment  
6     was, fire's out.

7                   It had been a nice  
8     three-dimensional fire doing its thing for  
9     days. And there was no tornado winds. There  
10    was no rainstorm. There was no other  
11    explanation for why the fire suddenly went  
12    out, other than fuel source removed. In  
13    other words, it wasn't enough leak to sustain  
14    fire anymore. So you remove fuel from the  
15    fire triangle, fire goes out.

16                  So in the assessment, there was  
17    no audible pressure leak being detected from,  
18    you know -- Charles was on the car, right up  
19    with his -- you know, reasonably within a  
20    foot or so of the housing. Held his breath,  
21    so his air pack wasn't making an audible  
22    sound to -- he listened carefully. There was  
23    no -- there was no audible hiss. So that  
24    is -- they're plugged up. Something plugged  
25    up those orifices. No longer feeding the

1 fire, so that's a change in condition.

2 Then with our own observation  
3 of an outer jacket, a big enough gap that I  
4 could get my hand on it, took off my glove,  
5 put the back of my hand on it. It was too  
6 hot that I couldn't hold my hand more than  
7 three seconds.

8 So that's the honed-in -- what  
9 I distinctly remember on that day, it would  
10 fit that answer to your question.

11 Q. Okay. So we got two things,  
12 the fire going out and the heat increasing?

13 A. Yes.

14 Q. Those were the -- kind of the  
15 changing conditions on Sunday that were  
16 warranting a vent and burn operational  
17 tactic?

18 A. Well, it was adding to --

19 Q. Or discussion?

20 A. It was adding to the recipe of  
21 entire -- of all -- I mean, it's one factor  
22 in a lot of factors, but, yes.

23 Q. Okay. And the heat at that car  
24 actually ended up decreasing by about  
25 10 degrees by the time of the vent and burn.

1 Right? Maybe more?

2 A. I don't recall what the charts  
3 say.

4 Q. Okay. Do you have any reason  
5 not to believe what's on the charts?

6 A. Well, the --

7 MR. LEVINE: Objection.

8 THE WITNESS: I mean, the data  
9 collected was the data collected.

10 As a possibility, in all my  
11 years of experience and all the  
12 chemists and all the producers that  
13 have taught me in monomers and  
14 polymerization -- polymerizable  
15 materials, in my own personal  
16 experience jackhammering tanks and  
17 doing anything from gooey, partially  
18 reacted gum in the middle, to  
19 jackhammering and physically removing  
20 solidified crud from around the outer  
21 perimeters of tanks, a possibility  
22 that would potentially explain that  
23 temperature decrease would be polymer  
24 formation inside the car further  
25 insulating things like point-and-shoot

1 thermometers.

2 So --

3 QUESTIONS BY MS. HERLIHY:

4 Q. Did you --

5 A. -- it's a long way to answer  
6 your question.

7 Q. It is. And I won't try to  
8 break it down too much, but just ask whether  
9 you expressed that to anyone at the time.

10 A. Not specifically, no.

11 Q. Okay. Did anyone ask you for  
12 an explanation of why the temperatures might  
13 be going down in a polymerization situation?

14 A. No, not that I recall.

15 Q. Okay. Have you been in a  
16 polymerization situation where something's  
17 actively polymerizing yet the temperature is  
18 going down?

19 A. No. This is a rare event.

20 Q. Okay.

21 A. This -- I've not -- no.

22 Q. Typically, polymerization is an  
23 exothermic reaction.

24 Correct? It gives off heat?

25 A. From my understanding in the

1 heat of chem -- yeah, chemical reactions like  
2 this, my understanding, they would generate  
3 some heat.

4 Q. And they happen quickly.

5 Correct?

6 MR. LEVINE: Objection.

7 THE WITNESS: Well, some --  
8 they're all different. I think that's  
9 one thing that I've been taught is,  
10 the chemistry is different from a  
11 styrene to a methyl methacrylate to a  
12 VCM. I acknowledge that products are  
13 different, so they're going to react  
14 differently.

15 QUESTIONS BY MS. HERLIHY:

16 Q. What have you been taught about  
17 the speed at which VCM polymerizes?

18 A. Nothing specifically.

19 Q. Okay. So you don't know how  
20 quickly VCM polymerizes?

21 A. I do not.

22 Q. Okay. And you talked about  
23 Charles Filby climbing up on top of the car  
24 and getting his face right next to the  
25 pressure relief device?

1           A.       Well, I told him to keep his  
2       head and upper torso clear of the protective  
3       housing, but get close where you can listen  
4       and get your meter into it.   So --

5           Q.       So -- sorry.

6           A.       No, no, no.   I respect the  
7       question.

8                   Obviously his safety is number  
9       one.   So we specifically briefed, don't put  
10      your head over the -- we keep the upper body,  
11      torso, clear of those kinds of things.

12                  And I was on the ladder.   I  
13      mean, we were both on the car.   I just had  
14      him do the walking.   Okay?   I kind of  
15      started, got him up there, because I said,  
16      you know what, I've done these for years, you  
17      get up here.

18                  So I coached him from on the  
19      ladder and on the ground.   I got two vantage  
20      points of him.   And anyway, I was up and down  
21      off the ladder of the car, too.

22                  So -- I'm sorry, I got winded  
23      there.

24           Q.       That's okay.   I forgot what my  
25      question was, too.



1                   Yeah, I just want talk about  
2     Charles Filby and how close he got to the  
3     pressure plate.

4                   Was he close enough to have  
5     taken a temperature?

6           A.       We did not have a thermometer  
7     with us on that entry. We had a  
8     photoionization detector with him, and that  
9     was -- because that was the other thing.  
10    If it was -- why did the fire burn out.

11                  The purpose at entry was, we  
12    were assessing why did the fire burn out.  
13    And my concern was, if it's actively leaking  
14    and unignited, it's going to find some  
15    residual fire on the ground, because the  
16    vapor density is heavier than air, and it  
17    could flash back and have a sudden and  
18    violent whoosh to the -- kind of a problem,  
19    and have another problem, right?

20                  So --

21           Q.       My question was, though, was he  
22    close enough to have taken a temperature?

23                  If he had the right equipment  
24    with him, could he have taken a temperature  
25    at the pressure plate?

1           A.       Yes. Hindsight 20/20, he could  
2     have had a -- if we'd have thought about  
3     taking an infrared thermometer there, we  
4     could have, yeah.

5           Q.       Did you get close enough for  
6     you to actually hear whether there was a hiss  
7     sound --

8           A.       No.

9           Q.       -- or was it just Charles?

10          A.       Like I say, he's 30 years  
11     younger than me. I let him do the climbing.

12                   And like I say, I'm trying to  
13     teach the next generation, so these are  
14     little opportunities that I'm trying to  
15     capture in my career.

16          Q.       Okay. So you didn't actually  
17     hear whether there was a hiss coming out or  
18     not?

19          A.       No, I relied on Charles' report  
20     for that.

21          Q.       Okay.

22          A.       And on my own observation from  
23     the ladder and on the ground, no.

24          Q.       How far away were you from the  
25     pressure plate?

1           A.       So the ladder of a hopper car,  
2       I'd have to go back to the length of the  
3       cars, but basically half the length of the  
4       vinyl car. They were pretty much parallel  
5       with each other, so...

6           Q.       Close -- do you think you were  
7       close enough to hear as well as Charles did?  
8       Excuse me.

9           A.       Not as well as him.  
10                    I just wanted to caveat that,  
11       you know, I also used my own senses to listen  
12       for myself, even from the ground. It's  
13       just -- I want to just make sure I get clear  
14       on the record.

15          Q.       Okay.

16          A.       And the ladder.

17          Q.       Okay. I think this is my last  
18       question or maybe series of questions,  
19       Mr. McCarty.

20                    Is it true that hot-tapping can  
21       be done to a critically damaged car even if  
22       all the valves and fittings are not usable or  
23       accessible?

24          A.       Well, that's actually the  
25       fundamental purpose of the tactic.

1 Q. Okay.

2 A. When you don't have usable  
3 valves and fittings, that's when we consider  
4 hot-tapping, yes.

5 Q. Okay. You didn't do it here  
6 because you suspected polymerization.

7 Correct?

8 A. There were a few factors.  
9 Certainly all the data suggests a likelihood  
10 of probability of polymerization.

11 The environmental spillage that  
12 had been spilled on the ground, we'd have had  
13 to dig through it, dig pits and put people in  
14 the ground, in potential LEL conditions with  
15 welders from those residual, flammable,  
16 combustible liquids that could still be  
17 oozing and seeping around those soils at that  
18 moment in time.

19 The third factor -- and again,  
20 all these calls with all these folks that  
21 don't even get their names. But I guess  
22 someone had brought up somebody did  
23 calculations of PRDs going off and burn  
24 rates. And then you add liquid line gaskets  
25 failing and some liquid adding to that with

1 liquid line gasket failures.

2                   Somebody speculated that  
3 there's a possibility that some of these cars  
4 could have been empty from the time they  
5 burned. So that is a big X factor in all of  
6 this.

7                   You just -- once somebody --  
8 somebody with -- somebody that says they did  
9 calculations and suspect that they could be  
10 empty, that is a serious X factor in the  
11 thought process.

12               Q.       Okay. Let's talk about that  
13 last piece first.

14                   When you say "somebody," who  
15 are you talking about?

16               A.       Again, I didn't get people's  
17 names. There was a lot of people on those  
18 calls.

19               Q.       Are you talking about someone  
20 at Oxy?

21               A.       Yes, ma'am, I believe so.

22               Q.       You're saying someone at Oxy  
23 did calculations that indicated that some of  
24 these cars could have been empty?

25               A.       Someone on one of those calls

1       talked about PRD burn rates and speculating  
2       that they -- at least one or more of these  
3       cars could be empty.

4               Q.       Okay. There's a difference in  
5       my mind between speculating they could have  
6       been empty and doing calculations.

7                       Did somebody tell you they --

8               A.       No, no, someone said --

9               Q.       Let me finish my question.

10              A.       I'm sorry.

11              Q.       Did somebody actually tell you  
12       they did calculations of that?

13              A.       Someone said they did  
14       calculations.

15              Q.       Okay. You don't know who it  
16       was?

17              A.       I'm sorry, I don't.

18              Q.       Okay. And when was that?

19              A.       I don't -- I don't remember  
20       which call it would have been. I don't.

21              Q.       Did you share that information  
22       with Norfolk Southern?

23              A.       Yes.

24              Q.       Do you know whether that  
25       information was shared with incident command?

1           A.       I don't know.

2           Q.       And who did you share it with  
3       at Norfolk Southern?

4           A.       I believe it was either  
5       probably Scott Deutsch or Jon Simpson that  
6       would have actually been on the call.

7           Q.       Did you ask for copies of those  
8       calculations?

9           A.       No.

10          Q.       Do you know how those  
11       calculations were done?

12          A.       No.

13          Q.       Have you ever seen those  
14       calculations?

15          A.       No.

16          Q.       Has anyone today ever said they  
17       did those calculations?

18                   MR. LEVINE:   Objection.

19                   THE WITNESS:   Other than those  
20       calls, I mean, after the fact, no.

21       QUESTIONS BY MS. HERLIHY:

22          Q.       Okay.   And since that time, you  
23       still haven't seen those calculations?

24          A.       No.

25                   MS. HERLIHY:   Okay.   All right.

John Andrew McCarty

1 I don't know whether I have any time  
2 left, but if I do, I'll reserve it. I  
3 might have a few minutes, but I will  
4 let our next participant step up.

5 Thank you, Mr. McCarty. I  
6 appreciate it.

7 THE WITNESS: You're welcome.

8 VIDEOGRAPHER: Off the record  
9 at 9:44.

10 (Off the record at 9:44 a.m.)

11 VIDEOGRAPHER: We are now back  
12 on the record at 9:54.

13 DIRECT EXAMINATION

14 QUESTIONS BY MS. KARIS:

15 Q. Mr. McCarty, good morning, I  
16 guess. It's still morning.

17 A. Good morning.

18 Q. My name is Carrie Karis. I'm  
19 an attorney with Kirkland & Ellis that  
20 represents GATX and General American Marks  
21 Company.

22 A. Okay.

23 Q. As I understand it, both  
24 yesterday and today, the testimony you've  
25 been giving has been on behalf of yourself,



1 but also on behalf of SPSI.

2 Is that correct?

3 A. Yes, ma'am.

4 Q. Okay. And that's because you  
5 are the principal owner of SPSI.

6 Correct?

7 A. Yes. Yes, ma'am.

8 Q. How many employees does SPSI  
9 have?

10 A. Today, over a hundred.

11 Q. And at the time of the incident  
12 on February 3rd of 2023, how many employees  
13 did SPSI have, roughly?

14 A. In the 90s. I think 2022 would  
15 have been, into 2023, roughly 90-some.

16 Q. And of the 90 or hundred  
17 employees, how many are technical folks as  
18 opposed to other functions like CFOs or  
19 administrators or anything like that?

20 A. Can you kind of narrow down  
21 your word "technical folks"?

22 Q. Sure.

23 A. Like would you define a  
24 technical --

25 Q. I want to exclude -- apologies.

1 I want you to exclude anybody  
2 that serves in an administrative function.

3 A. Okay.

4 Q. Or anybody that serves human  
5 resources.

6 A. Okay.

7 Q. Or anybody that serves in a  
8 financial, invoicing, AR, even your CFO.

9 Take those folks out.

10 A. Okay.

11 Q. Folks that provide technical  
12 services of any sort to your customers.

13 A. Okay. Well, it's still, I  
14 think -- in our positions, we have mechanics,  
15 truck drivers, field technicians that I  
16 wouldn't necessarily consider technical  
17 people. That's why I kind of asked you to --  
18 can you help me hone in on what your --

19 Q. Fair point.

20 Let's include all those folks -  
21 technicians, truck drivers, field folks.

22 A. Of the 90-some in that era --  
23 can I have a minute to think through?

24 Q. Sure.

25 A. Because I'm trying to process

1 those.

2 Q. Sure.

3 A. 70-ish, 75-ish.

4 Q. Of those 70-ish or so SPSI  
5 employees from 2023, how many have worked on  
6 the East Palestine derailment?

7 And again, ballpark.

8 A. Yeah. And the reason I'm  
9 taking the time, we've tried to keep a core  
10 continuity there for consistency, so -- but,  
11 you know, certainly as people take vacations  
12 and come and go, that's a variable.

13 Q. Are we talking about half, or  
14 are we talking about more than half?

15 A. No, maybe a third. If that's  
16 where --

17 Q. A third?

18 A. Maybe a third is -- you know.  
19 But I guess I'm trying to clarify, if I sent,  
20 like, a person to relieve somebody for a week  
21 or two for a vacation, do you want that  
22 person also included, or are you --

23 Q. I understand --

24 A. -- looking for raw numbers?

25 Q. Roughly a third.

1 Is that fair?

2 A. Yes.

3 Q. Okay. Now, you testified  
4 earlier that SPSI has billed \$157 million to  
5 date to the East -- or I'm sorry, let me  
6 correct that.

7 You testified that SPSI has  
8 billed \$157 million for the calendar year  
9 2023 for the East Palestine derailment to  
10 Norfolk Southern.

11 Correct?

12 A. Yes.

13 Q. Does that 157 million include  
14 work done by subcontractors, or was that just  
15 SPSI employees?

16 A. No, ma'am. That includes all  
17 subcontractors. Things like subcontractors,  
18 rental equipment and, like, waste  
19 transportation and disposal.

20 Q. Okay. Are you the sole  
21 principal owner of SPSI?

22 A. Yes.

23 Q. Was Norfolk Southern by far  
24 your largest customer in 2023?

25 A. Yes.

1 Q. Did you do other work for  
2 Norfolk Southern beyond the East Palestine  
3 derailment in 2023?

4 A. Yes.

5 Q. How much other work did you --  
6 would you say you did in 2023 for Norfolk  
7 Southern?

8 A. I don't have a guess.  
9 That's -- maybe at a break I can call my CFO  
10 and run that report. I --

11 Q. No need.  
12 Would it be in the millions of  
13 dollars?

14 A. Potentially over a million.  
15 Potentially.

16 Q. Okay. Now, you understand just  
17 from the work you've done alone that the East  
18 Palestine derailment is a significant issue  
19 for Norfolk Southern.

20 Correct?

21 A. Oh, absolutely.

22 Q. And you understand that there  
23 have been a number of lawsuits that have been  
24 filed arising from that action against  
25 Norfolk Southern -- or from that incident, I

1       should say, against Norfolk Southern.

2                       Correct?

3               A.       Yes.

4               Q.       And Norfolk Southern has agreed  
5       to pay for your lawyers in connection with  
6       services -- for legal services that you're  
7       required to participate in.

8                       Correct?

9               A.       Yes, ma'am.

10              Q.       And Norfolk Southern has, in  
11      fact, sent their lawyers along to join in any  
12      meetings that you've had where you discuss  
13      various testimony you're going to give.

14                      Correct?

15              A.       Yes, ma'am.

16              Q.       Norfolk Southern's lawyers have  
17      been present to help prepare you to testify  
18      to Congress.

19                      Correct?

20              A.       Never had any meetings, but I  
21      am thinking there might have been a Zoom call  
22      or something. This is a rough memory, but  
23      there might have been a Zoom call of some  
24      sort. But I honestly don't remember  
25      specific -- what I recall is making sure I

1 had Norfolk Southern's blessing to do this,  
2 because I was put in an awkward situation  
3 when I got the request.

4 Q. Sir, respectfully, I'm going to  
5 go back to my question.

6 A. I'm sorry.

7 Q. I'm going to move to strike the  
8 answer.

9 A. I'm sorry.

10 Q. If you can just listen to my  
11 question.

12 A. Okay.

13 Q. And when I say "meetings," that  
14 includes in-person, Zoom or on the phone.

15 Okay? Is that fair?

16 A. Okay.

17 Q. Norfolk Southern's lawyers have  
18 been present or participated in any meetings  
19 that you had to go prepare to testify to  
20 Congress.

21 Correct?

22 A. I have a really rough memory  
23 that "maybe" is my answer.

24 Q. Okay. Before you went to talk  
25 to the NTSB, when you were interviewed by the

1 NTSB, did you meet with any Norfolk Southern  
2 lawyers?

3 A. No.

4 Q. Before you went to testify,  
5 though, at the hearings in East Palestine in  
6 June of 2023, you did meet with Norfolk  
7 Southern's lawyers.

8 Correct?

9 A. Yes, ma'am.

10 Q. And you met with Norfolk  
11 Southern's lawyers on multiple occasions, you  
12 told us, before you went to the June 2023  
13 hearings.

14 Correct?

15 A. Yes.

16 Q. And I think you said three,  
17 four, five meetings.

18 Is that accurate?

19 A. In my rough memory, there was  
20 some -- that would be the -- what I'll call  
21 the cyber-type meetings, the online stuff,  
22 and what I'll call a day and a half of  
23 in-person.

24 Q. And how many cyber-type  
25 meetings?



1           A.       That's that three to five  
2     memory.

3           Q.       Okay. So somewhere between  
4     five and seven occasions, either by phone or  
5     in person before you went to testify to the  
6     NTSB in June of 2023, you met with Norfolk  
7     Southern's lawyers.

8                    Correct?

9           A.       Yes, ma'am.

10          Q.       And similarly, we asked you to  
11     come and testify here today, correct?

12                    Or yesterday and today,  
13     correct?

14          A.       Yes.

15          Q.       And again, Norfolk Southern's  
16     lawyers were present for the meetings that  
17     you had.

18                    Correct?

19          A.       Yes.

20          Q.       The only meetings that Norfolk  
21     Southern's lawyers didn't meet with you for  
22     was when you met with the NTSB to talk to  
23     them shortly after the incident and give your  
24     interview February 23rd of 2023.

25                    Correct?

1           A.       That's correct.

2           Q.       Okay. Now, you also met with  
3       the NTSB while the incident was unfolding  
4       before the vent and burn operations.

5                   Correct?

6           A.       I don't recall that. If there  
7       was any introduction, it would have been a  
8       handshake, and here's so-and-so from NTSB,  
9       but no meeting.

10          Q.       Okay. Now, is it correct,  
11       Mr. McCarty, excuse me, that at least up  
12       until you went to testify to the NTSB in June  
13       of 2023, you had never told the NTSB that you  
14       had any concerns about the reliability of the  
15       temperature measurements that were taken  
16       on-site on February 5th and February 6th?

17          A.       I'm sorry, can you repeat that?

18          Q.       Sure.

19                   At the June 2023 hearings --

20          A.       Okay.

21          Q.       -- you raised with the NTSB in  
22       a public setting that you had concern about  
23       the temperature readings that had been taken  
24       on February 5th and February 6th.

25                   Correct?

1           A.       Yes, ma'am.

2           Q.       Before June of 2023, did you  
3       ever tell the NTSB that you had concerns  
4       about the temperature readings and the  
5       accuracy of those readings that had been  
6       taken on February 5th and February 6th?

7           A.       During my interview with them  
8       at the church in East Palestine back in  
9       February, none of that came up, although my  
10      recollection of my -- we certainly -- I  
11      mentioned the -- I remember talking to them  
12      about when we found those changed conditions  
13      on Sunday with that western-most car. I'm  
14      sure I told them that.

15                 But other than that, I can't  
16      remember if they ever asked me anything about  
17      those temperature readings, and I'm sure of  
18      that.

19          Q.       So let me go back to my  
20      question.

21                 Did you ever tell the NTSB that  
22      you had concerns about the accuracy of  
23      temperature readings taken on February 5th  
24      and February 6th? Did you ever tell them  
25      that anytime before the June 2023 hearings?

John Andrew McCarty

1           A.       No, that was just -- I think  
2       when they had that draft report in early June  
3       was the first time that was kind of thrown in  
4       my face, like, holy crap, there's all these  
5       readings out here on the record.

6                    So no is the answer. It would  
7       have been just at those hearings.

8           Q.       Okay. So it's okay to just  
9       give a simple answer, yes or no.

10          A.       Yeah, I'm just trying to make  
11       sure what the question was. I'm just making  
12       sure.

13          Q.       I heard you say that was the  
14       first time it was kind of thrown in your  
15       face, holy crap, there's these readings out  
16       there in the record.

17                    Is that right?

18          A.       Yeah.

19          Q.       You realized that in June  
20       of 2023?

21                    MR. HANSON: Let's let her  
22       finish her question and then answer.

23                    THE WITNESS: I'm sorry. I'm  
24       sorry.

25

1       QUESTIONS BY MS. KARIS:

2               Q.       Is that correct?

3               A.       That's correct.

4               Q.       And you didn't know before June  
5 of 2023 that there were temperature readings  
6 that had been conveyed to the NTSB?

7               A.       I knew they were doing an  
8 investigation. I guess in their collection  
9 of data in that -- you know, we weren't  
10 hiding anything. It was just like -- I  
11 was -- I was -- my reaction was, I had told  
12 people these data weren't right, and here it  
13 is -- you know, here it is for all the world  
14 to see. And that's why I testified the way I  
15 did, because I need to clear the record.  
16 These data are bogus.

17              Q.       Yeah. So we're going to talk  
18 about whether the data is bogus.

19                      But I'm just trying to get to,  
20 before June of 2023, for whatever the reason,  
21 you never told anybody at the NTSB that you  
22 had concerns about those temperature  
23 readings.

24                      Is that correct?

25              A.       That's correct.

1           Q.       Okay. You did know, from  
2       February 5th until June of 2023, that the  
3       NTSB had undertaken an investigation of the  
4       incident.

5                    Correct?

6           A.       Yes.

7           Q.       And you knew that they were  
8       interviewing folks to learn what work they  
9       had done in connection with the incident.

10                   Correct?

11          A.       Yes.

12          Q.       And in fact, you yourself were  
13       interviewed.

14                   Correct?

15          A.       Yes, ma'am.

16          Q.       And you were interviewed about  
17       what role and involvement you had in  
18       connection with the incident.

19                   Correct?

20          A.       Yes.

21          Q.       And you were asked specifically  
22       about the vent and burn operations.

23                   Correct?

24          A.       I believe, yes, that was --  
25       that was -- they asked me about that. They

1        basically asked me to start the interview  
2        with recalling my story, right? Like just  
3        recalling my experiences from the period.

4                        So at some point they had  
5        questions afterwards, and I believe that was  
6        one of them.

7                        Q.        Right.

8                        And in fact, one of the things  
9        you talked to them about in your interview  
10       was the fact that you were attempting to  
11       gauge pressure from the vessels.

12                       Correct?

13                      A.        We considered and had tried to  
14       get pressures, and we realized we couldn't  
15       get good pressures, so that conversation  
16       would have come up. I don't remember word  
17       for word what's in there --

18                      Q.        Right.

19                      A.        -- but I'm listening.

20                      Q.        Right.

21                       The conversation with the NTSB  
22       included why was the decision made to vent  
23       and burn.

24                       Correct?

25                      A.        I don't recall the specifics of

1       that meeting --

2               Q.       Okay.

3               A.       -- at this point in time.

4               Q.       You do recall there being some  
5       discussion about trying to get pressures from  
6       the tank cars and being unable to do so.

7                       Correct?

8               A.       It would have been part of  
9       that, yes.

10              Q.       And you understood that the  
11       NTSB was trying to understand what's the  
12       basis for why this vent and burn operation  
13       took place.

14                      Correct?

15                      MR. LEVINE:  Objection.

16                      THE WITNESS:  I'd say I don't  
17       know that they were making that clear  
18       to me.  I can't say that I understood  
19       their -- I mean, again, this was my  
20       first experience in 35 years with such  
21       an interview, so I didn't assume  
22       anything with their process or what  
23       their goals were.

24       QUESTIONS BY MS. KARIS:

25              Q.       You spoke to the NTSB about how



1       you thought there was a high probability that  
2       the fires had triggered polymerization.

3                       Correct?

4               A.       Yes, ma'am.

5               Q.       And you talked to the NTSB,  
6       regardless of what you understood why they  
7       were doing it, that you were part of the  
8       group that recommended vent and burn.

9                       Correct?

10              A.       We were certainly part of the  
11      group that looked at all options.

12              Q.       Okay. And you understood at  
13      least for whatever the NTSB was doing, part  
14      of their discussion was -- with you was about  
15      the vent and burn operations.

16                      Correct?

17              A.       Yes, ma'am.

18              Q.       But despite the fact that you  
19      talked to them about trying to take  
20      temperatures and the vent and burn operations  
21      and the reason for the vent and burn  
22      operations, you never mentioned concern over  
23      the accuracy of the thermal image -- I'm  
24      sorry, of the thermal readings taken that  
25      day.

1                   Correct? Or those days, to be  
2     accurate.

3                   MR. HANSON: Objection.

4                   THE WITNESS: Yeah, I'd say  
5     part of your question, I'd like you  
6     to -- there was part of your question  
7     that says about I discussed  
8     temperature stuff with them, and I  
9     guess I want to make sure I heard your  
10    question clearly.

11                  If I could ask you to repeat  
12    your question.

13    QUESTIONS BY MS. KARIS:

14                  Q.     Sure.

15                  Well, you agree with me that  
16    you talked to the NTSB about the fact that  
17    you went in with a thermal imaging camera and  
18    you documented a reading?

19                  A.     On the western-most car.

20                  MR. LEVINE: Objection.

21    QUESTIONS BY MS. KARIS:

22                  Q.     Right.

23                  And you talked about the fact  
24    that in that vicinity you got 135 Fahrenheit  
25    in ambient conditions at the time were much

1 lower.

2 You talked to them about that,  
3 right?

4 A. In addition, my own bare hand  
5 couldn't be held on it for more than three  
6 seconds, yes, ma'am.

7 Q. Okay. I didn't ask what else.

8 A. I understand. I'm just  
9 clarifying for the record.

10 Q. So just answer the question, if  
11 you wouldn't mind.

12 A. Okay.

13 Q. My question was, you talked to  
14 the NTSB about the fact that you got  
15 135-degree Fahrenheit temperature reading  
16 using a thermal imaging camera.

17 Correct?

18 A. Yes, ma'am.

19 Q. You talked to them about the  
20 fact that you were monitoring to look at  
21 whether there was any trending.

22 Correct?

23 A. I think so, yes, ma'am. I  
24 think I remember that from the meeting.

25 Q. And you also told the NTSB how

1       it never got worse, thankfully, than that  
2       135-degree temperature reading that you got.

3                       Correct?

4               A.       I did.

5                       MR. LEVINE:  Objection.  Sorry,  
6               objection.

7       QUESTIONS BY MS. KARIS:

8               Q.       So you were talking about  
9       temperatures with the NTSB in your interview  
10      on February 28th {sic} of 2023.

11                      Correct?

12              A.       On that particular car.

13              Q.       Right.

14              A.       I want to make sure that's  
15      clear, on that western-most car.

16              Q.       I understand that.  On that  
17      particular car.

18                      But on that particular car, or  
19      in the context of your whole interview, you  
20      certainly never mentioned one word about  
21      concern over the accuracy of any of the  
22      temperature readings.

23                      Is that correct?

24                      MR. HANSON:  Objection.

25                      THE WITNESS:  I don't -- I'd

1           have to go back and look through that  
2           whole document, but I don't remember  
3           doing that, no.

4       QUESTIONS BY MS. KARIS:

5           Q.       I will represent to you that I  
6       have gone through it page and line --

7           A.       Okay.

8           Q.       -- and there's no mention  
9       anywhere --

10          A.       Okay.

11          Q.       -- of the accuracy.

12                   And I just want to make sure  
13       you don't recall talking to them about it and  
14       somehow it didn't end up in the transcript.

15          A.       No, that's -- that would jive  
16       with my recollection. I don't think that  
17       ever came up.

18          Q.       Okay. So the first time it  
19       came up with the NTSB, as we established, was  
20       in June of 2023, and that would be after you  
21       had multiple meetings with lawyers.

22                   Correct.

23          A.       It was after I saw their draft  
24       report.

25                   (McCarty Exhibit 23 marked for

1 identification.)

2 QUESTIONS BY MS. KARIS:

3 Q. Okay. Now, I've handed you  
4 what I think we've marked as Exhibit 25.

5 A. 23?

6 Q. 23, excuse me.

7 Mr. McCarty, do you recognize  
8 Exhibit 23?

9 A. Yes.

10 Q. All right. And that is, for  
11 the record, a notice of your deposition --

12 A. For today.

13 Q. -- for today, including the  
14 corporate rep topics.

15 Correct?

16 A. Yes, ma'am.

17 Q. All right. And you -- before  
18 yesterday, you came prepared to testify about  
19 the topics that were in that notice of  
20 deposition.

21 Correct?

22 A. Yes, I certainly hope so. It's  
23 why I'm here.

24 Q. Now, did you -- you told us  
25 that last night you went and did some

1 homework.

2 Is that correct?

3 A. Yes, ma'am.

4 Q. And that would be while you  
5 were in the middle of your testimony, because  
6 you knew you were coming back today to answer  
7 my questions.

8 Correct?

9 A. Well, to clarify, it was  
10 questions that you-all or whoever interviewed  
11 me yesterday wanted me to follow up on, so...

12 Q. Did anybody ask you to go call  
13 all the folks that had worked on the incident  
14 and taken temperature readings?

15 A. Well, I thought I promised  
16 somebody a follow-up on that --

17 Q. Okay.

18 A. -- so my understanding was,  
19 yeah, that was part of my homework.

20 Q. Okay.

21 A. So if I misunderstood, I  
22 apologize.

23 Q. Fair enough.

24 You understood that was part of  
25 the homework that you were to do.

1 Correct?

2 A. Yes.

3 Q. All right. And you ended up  
4 speaking, if I heard you correctly, with four  
5 different people last night?

6 A. I think it was more than that.  
7 I think I gave you the list of folks.

8 Q. I may have not gotten them all,  
9 but at least four folks.

10 Fair?

11 A. Yeah. Yes.

12 Q. Had you talked to them about  
13 the work that they had done before we started  
14 the deposition yesterday in order to prepare  
15 to testify?

16 A. No. Not for this deposition,  
17 no.

18 Q. Okay. But you understood that  
19 one of the topics for the dep notice was the  
20 temperature readings taken on February 4th --  
21 I'm sorry, 5th and 6th.

22 Correct?

23 A. Yes.

24 Q. All right. I want to follow up  
25 and ask you a few questions.



1 First of all, did you discuss  
2 with them what led you to call them last  
3 night?

4 A. Just clarifying that the  
5 questions that y'all asked me yesterday on  
6 clarifying, you know, did they get to the  
7 metal, which I already knew from June. The  
8 same questions that we already asked and  
9 answered, just went back around and verified,  
10 and it's verified.

11 Q. Okay. So you told them, I'm in  
12 the middle of a deposition, or I'm having my  
13 testimony taken, and I have some follow-up  
14 questions for you.

15 Is that fair?

16 A. I did tell them that, you know,  
17 the attorneys had some questions, and it was  
18 the same things we were fact-finding, you  
19 know, in preparation for the East Palestine  
20 hearings.

21 And I already knew the answers.  
22 That's why I testified to the answers in East  
23 Palestine. And they just reconfirmed it last  
24 night.

25 Q. All right. So I want to talk a

1 little bit about either last night if they  
2 told you this or the work that you had done  
3 to come in prepared to testify here before.

4 With respect to the temperature  
5 readings that Mr. Klepsic took, do you know  
6 on how many occasions he took readings?

7 A. Him specifically, no, ma'am.

8 Q. Do you know approximately how  
9 many readings he took?

10 A. Again, for any one of those  
11 guys, I couldn't tell you who did more than  
12 ours. I just -- I don't know who took more  
13 than others.

14 Q. Okay. Do you know which of the  
15 tank cars any one of them took a reading on?

16 A. No, I didn't interview them to  
17 that detail. They were all entry teams,  
18 checking the cars for Jon Simpson.

19 Q. Okay. But do you know whether  
20 they would go back to -- each of them would  
21 go back to the same car, since there were  
22 readings taken every hour, or whether they  
23 were alternating what cars they were going  
24 to?

25 MR. LEVINE: Objection.

1 THE WITNESS: I'm not certain,  
2 ma'am.

3 QUESTIONS BY MS. KARIS:

4 Q. Do you know for any car that  
5 they took a reading, where they were standing  
6 when they took the readings?

7 A. Yes. There was consistency in  
8 that because the options just weren't there.  
9 They were very limited.

10 Q. Okay.

11 A. So they were going to the same  
12 limited, bad options.

13 Q. All right. We're going to talk  
14 about those limited, bad options.

15 But you know where they were  
16 standing, is what I'm hearing.

17 Correct?

18 A. Well, I don't, but they do.

19 Q. Well, maybe I misspoke. I  
20 asked whether you know for any of those cars  
21 where they were standing when they took those  
22 readings.

23 Do you know, is the question?

24 A. Okay. I missed that. Somehow  
25 I missed that question.

1                   So, no. Specifically where  
2       they found those golf ball holes, each of  
3       them in their own words had led me -- these  
4       golf ball holes, low, high, a couple of them  
5       were in the vapor space, a couple of them  
6       were low. And I don't remember which cars  
7       were which or who did what, when, so I don't  
8       have those details.

9                   Q.       So let's just break that up a  
10      little bit.

11                  A.       Okay.

12                  Q.       For any one of the cars, do you  
13      know at which location the temperature  
14      readings were taken from?

15                  A.       Well, one of the documents  
16      yesterday, one of the notes, had talked  
17      something about a knee-high reading. That  
18      would have been one of several of different  
19      locations. So I do know of that one.

20                  Q.       Other than -- okay.

21                           And even the knee-high reading,  
22      do you know on which side of the tank car it  
23      was?

24                  A.       If it's not in that note from  
25      yesterday, no, ma'am, I don't.

1           Q.       Okay. Do you know whether the  
2       readings were taken closer to the front or  
3       closer to the back of the tank cars?

4           A.       I don't know, ma'am.

5           Q.       The holes, the golf-sized  
6       hole -- the golf-ball-sized holes, did you  
7       yourself observe them?

8           A.       No, I did not.

9           Q.       So when you tell us that these  
10      were golf-ball-sized holes, you haven't seen  
11      them.

12                   Correct?

13          A.       Correct.

14          Q.       You don't know where on the car  
15      those readings were taken.

16                   Correct?

17          A.       Correct.

18          Q.       You yourself didn't take any  
19      readings.

20                   Correct?

21          A.       Correct.

22          Q.       You never attempted to take any  
23      readings.

24                   Correct?

25          A.       The reading on the far west

1 car, the 135 --

2 Q. Fair point.

3 With the exception of the one  
4 reading of 135 that you told us about, take  
5 my client's car, GATX95098, which was not  
6 that car, you never attempted to take a  
7 reading of that car.

8 Correct?

9 A. Not personally, no, ma'am.

10 Q. Okay. And so what you've been  
11 telling us about here in terms of the  
12 readings, that's not what you yourself had  
13 observed?

14 A. I myself, that's correct.

15 Q. Okay. Now, your team was, at  
16 the time, communicating with you about the  
17 readings they were taking.

18 Correct?

19 A. In the first two entries, yes,  
20 ma'am.

21 Q. Okay. And in fact, your team  
22 continued communicating with you about the  
23 readings they had taken, as we saw in  
24 Exhibit 18, on February 23rd in order to help  
25 prepare you testify.

1                   And I'll hand this back to you.

2           A.       Thank you.

3           Q.       I think you told Ms. Herlihy  
4       that's why that document was prepared. Or  
5       sent to you, at least.

6                   Correct?

7           A.       Well, it was sent to me on the  
8       23rd of February.

9           Q.       Yeah. That's what I heard you  
10       say.

11          A.       Yeah.

12          Q.       And I apologize if I misspoke.

13                   But to be clear, information  
14       was communicated to you in February, at least  
15       at the time of the incident or subsequently,  
16       concerning the temperature readings that had  
17       been taken.

18                   Correct?

19          A.       The first two entry teams, I  
20       was actively in tune, wanting to know if  
21       anybody had any good chance to get to the  
22       tank shell.

23                   And when two entry teams with  
24       two of my most senior, skilled, experienced  
25       folks absolutely said, no, these are not

1 reliable, when I communicated that to Norfolk  
2 Southern, at that moment I did not pay a lot  
3 of attention to the subsequent readings. And  
4 they were to alert me if anything radically  
5 changed. Nothing ever radically changed.

6 So that's the honest answer to  
7 those data that were -- again, I was  
8 confident from my people that they were bogus  
9 data, so I didn't actively engage in the  
10 future hours. Unless something was --  
11 strange that occurred, they were to alert me.  
12 But other than that, I did not track every  
13 single text.

14 Q. I'm going to come back to the  
15 bogus data. But you would agree with me that  
16 that data continued to be collected on an  
17 hourly basis on February 5th and  
18 February 6th.

19 Correct?

20 A. I believe so, yes.

21 Q. And data was being collected at  
22 a time when you believed that polymerization  
23 was occurring.

24 Correct?

25 A. I believe it was a potential of



1 occurring, yes, ma'am.

2 Q. And data was being collected by  
3 members of your team and staff going up close  
4 to those cars that you thought were  
5 polymerizing.

6 Correct?

7 A. Yes, ma'am.

8 Q. And they were collecting data  
9 that you thought was unreliable.

10 Correct?

11 A. Yes, ma'am.

12 Q. And you knew that the risk that  
13 they were facing was, if polymerization was  
14 occurring, at any point in time those cars  
15 could have exploded.

16 Correct?

17 A. Yes, ma'am.

18 Q. But you continued to send your  
19 team out to collect bogus data that you  
20 thought was not accurate or useful for any  
21 purpose.

22 Is that correct?

23 A. That's correct.

24 Q. Okay. And that bogus data,  
25 what you're calling bogus data now, or at

1 least at the hearing starting in June --

2 A. And the night of February 5th  
3 to Norfolk Southern --

4 Q. We're going to get to that in a  
5 second, I promise you.

6 MR. HANSON: Just let her ask  
7 her question.

8 THE WITNESS: I'm sorry.

9 QUESTIONS BY MS. KARIS:

10 Q. That bogus data, you never once  
11 put in any written document that you did not  
12 believe that data was accurate.

13 Correct?

14 A. No, I did not.

15 Q. You never once mentioned to the  
16 NTSB in February -- 20 days post-incident  
17 that that data was bogus.

18 Correct?

19 MR. HANSON: Objection.

20 THE WITNESS: They never asked  
21 me for that, and I didn't think to  
22 talk about it.

23 QUESTIONS BY MS. KARIS:

24 Q. Okay. Now, you said you told  
25 two folks at Norfolk Southern, at least two

1 folks at Norfolk Southern, that the data was  
2 bogus.

3 Correct?

4 A. Yes, ma'am.

5 Q. And I believe you told  
6 Ms. Herlihy today, you told those two folks  
7 at Norfolk Southern that the data was bogus.

8 Correct?

9 A. Yes, ma'am.

10 Q. But you don't recall telling  
11 anybody else at incident command that the  
12 data was bogus.

13 Correct?

14 A. That's correct.

15 Q. You don't recall telling folks  
16 from the Ohio EPA or any other government  
17 agency.

18 Correct?

19 A. It was not our role to  
20 communicate with the command staff. That  
21 was -- we communicated with Norfolk Southern  
22 HAZMAT. It's not the line of communication.

23 Q. I'm not asking whether it was  
24 your role to communicate with them or not.

25 If you were putting your

1 employees at risk of being present when an  
2 explosion took place from polymerization, and  
3 you've got fire department, you've got the  
4 EPA, you've got different local emergency  
5 officials, you never once went up to them and  
6 said, you guys are putting my crew at risk  
7 with these temperature readings that we're  
8 taking that I, in my 35 years of experience,  
9 think is bogus.

10 Correct?

11 MR. LEVINE: Objection.

12 QUESTIONS BY MS. KARIS:

13 Q. Is that correct?

14 MR. LEVINE: Objection.

15 THE WITNESS: I never spoke  
16 with the fire chief about it.

17 QUESTIONS BY MS. KARIS:

18 Q. All right. You continued to  
19 put your folks at risk, believing that the  
20 data was bogus. That's what you're telling  
21 us.

22 Correct?

23 A. That was our assignment at the  
24 time.

25 Q. Right.

1                   And you were getting paid by  
2     the hour for the work that you were doing at  
3     the time.

4                   Correct?

5           A.       Sure.

6           Q.       Okay. Now, let's talk about  
7     the work that you were doing and the  
8     communications you had.

9                   You did talk to Oxy's folks  
10    back in Dallas.

11                  Correct?

12          A.       Yes, ma'am.

13          Q.       And you understood, I think you  
14    told me -- you told Ms. Herlihy, excuse me --  
15    that one of the criticisms or things for  
16    improvement that you would suggest to Oxy is  
17    they need to better empower their folks on  
18    the ground because too much power resides  
19    with the folks in Dallas.

20                  Correct?

21                  MR. LEVINE: Objection.

22    QUESTIONS BY MS. KARIS:

23          Q.       In a nutshell.

24          A.       I did say that yesterday, yes.

25          Q.       Yeah. And you said you knew

1       that going into the incident from your prior  
2       experiences with Oxy.

3                       Right?

4               A.       There was a consistent pattern  
5       that I observed during the East Palestine  
6       incident with the Paulsboro incident, yes.

7               Q.       Yeah.

8                       So when you arrived at East  
9       Palestine, you had prior experience with Oxy.

10                      Correct?

11              A.       Yes, ma'am.

12              Q.       And your prior experience told  
13       you the folks in Dallas are the ones with the  
14       power and authority, not the boots on the  
15       ground here in East Palestine.

16                      Right?

17              A.       Not prior to, no. I'd say no  
18       to that question the way it's phrased. If  
19       you want to rephrase it, I'll -- if you want  
20       to restate it or --

21              Q.       Sure.

22              A.       I can't say I had any  
23       preconceived notion of that, no.

24              Q.       What you had is prior  
25       experience with Oxy in which you had formed

1 the view that they don't empower the folks --  
2 that all decisions basically go back to the  
3 folks in Dallas. I think that's what you  
4 told us yesterday.

5 Correct?

6 MR. LEVINE: Objection.

7 THE WITNESS: That was a --  
8 that was an observation that she asked  
9 an open question, and I thought about  
10 it, and that's an honest reply.

11 QUESTIONS BY MS. KARIS:

12 Q. Okay.

13 A. The scheduled job that I recall  
14 in Illinois, nonemergency job --

15 Q. I don't need to know which  
16 cases.

17 A. Well, I'm just saying it was  
18 built up over --

19 Q. I'm going to move to strike the  
20 rest.

21 A. Okay.

22 Q. We're limited on time, so if we  
23 could just focus on my question.

24 A. I'd like to get on the record  
25 that I did not have a preconceived notion

1 going into East Palestine with that ideology.

2 I did not.

3 Q. Okay. Fair enough.

4 Now, but you did know that at  
5 least the reason you were getting on the  
6 phone with the folks in Dallas from Oxy is  
7 because Oxy thought those folks had something  
8 to contribute to the decision-making.

9 Is that fair?

10 MR. LEVINE: Objection.

11 THE WITNESS: Sure.

12 QUESTIONS BY MS. KARIS:

13 Q. Okay. And when you talked  
14 to -- do you know the gentleman's name who  
15 you spoke to in Dallas, or was it more -- I  
16 think there were several people on the phone,  
17 but you said you remember at least one.

18 Correct?

19 A. My lead contact with Oxy  
20 emergency response is Tim.

21 Q. Was that who you were speaking  
22 to in Dallas?

23 A. He was one, I think,  
24 orchestrated the phone call.

25 Q. Right.



1           A.       He was one of the many people  
2     on the call.

3           Q.       Do you remember Mr. Brennan  
4     being on the phone?

5           A.       Again --

6           Q.       You don't?

7           A.       -- I don't remember names.

8           Q.       Okay. Whoever it was that was  
9     on the phone at Oxy, did you tell those folks  
10    that, hey, we're getting these temperature  
11    readings, and I think they're bogus?

12                   MR. LEVINE:  Objection.

13                   THE WITNESS:  I don't remember  
14           the calls in sentence-by-sentence  
15           detail.  I don't recall.

16    QUESTIONS BY MS. KARIS:

17           Q.       Okay.  Now, I think you  
18     testified yesterday that you -- that this was  
19     a team effort.

20                   Is that right?

21           A.       Yes, ma'am.

22           Q.       Loss of people to offer  
23     insight, is what you testified to.

24                   Correct?

25           A.       Yes.

1           Q.       Okay. And did you include the  
2       Oxy team in that "lots of people to offer  
3       insight"?

4           A.       Yes, ma'am. There was a lot of  
5       people on those phone calls.

6           Q.       All right. But all those  
7       people on those phone calls, did you tell any  
8       of them that you were not trusting the  
9       temperature readings that you guys were  
10      getting at the scene, on the ground, by the  
11      hour?

12                   MR. LEVINE: Objection.

13                   THE WITNESS: Yeah, the time of  
14      the calls with Oxy, those temperature  
15      readings hadn't been collected.

16      QUESTIONS BY MS. KARIS:

17           Q.       Okay. There were temperature  
18      readings collected on February 5th and  
19      February 6th.

20                   Is that fair?

21           A.       Yes, ma'am. Afternoon, evening  
22      of the 5th, into the morning of the 6th.

23           Q.       You had a conversation with  
24      somebody at 8 a.m., or 8 or 9 a.m., on  
25      February 5th at Oxy.

1 Correct?

2 A. That sounds about right.

3 Q. Was that the only conversation  
4 you ever had with anybody over in Dallas?

5 A. That's my memory. It was in a  
6 rental car. It was the SRS rental car.  
7 That's my memory, yes.

8 Q. So after that one conversation,  
9 again, you never communicated with anybody at  
10 Oxy, is that correct, that was in Dallas?

11 A. That's my memory, yes, ma'am.

12 Q. Okay. And so after the  
13 temperature readings started, you did not at  
14 any point ask to speak to anybody in Dallas  
15 about what, if anything, is occurring in the  
16 field that we're going out there and getting  
17 these hourly readings?

18 A. I'm sorry.

19 Q. That was a bad question.

20 A. Yeah, let me -- I didn't follow  
21 the question.

22 Q. The temperature readings, you  
23 started collecting them February 5th.

24 Correct?

25 A. Yeah, sometime that afternoon,

1 evening-ish. I don't remember exactly what  
2 time.

3 Q. And we already established, I  
4 believe, they were taken on the hour.

5 Correct?

6 A. Something like that.

7 Q. Do you know how many readings  
8 were taken each time, on the hour, one of  
9 your employees was taking a reading?

10 A. I don't remember, no.

11 Q. You know and you don't  
12 remember, or you just never knew how many  
13 readings they were taking?

14 A. They were trying to --  
15 everywhere they had those little bit of gaps,  
16 they were trying to get temperature readings  
17 from. That's what they did every entry.  
18 Every entry, they went to every gap they had  
19 to offer.

20 Q. Did they take only one reading,  
21 though, is the question?

22 A. At each entry?

23 Q. Yes.

24 A. It would have been a reading  
25 from whatever, you know, small gap they

1       thought they had to try. So I'm not -- I  
2       guess I'm not really clear on the question,  
3       but that's my best answer.

4               Q.       Okay. I'll move on.

5                       I think you have Exhibit 1  
6       there. I think it was Exhibit 1.

7                       MR. HANSON: It's in the stack.

8       QUESTIONS BY MS. KARIS:

9               Q.       The Chair's factual report,  
10       hazardous materials factual report.

11                      If I could direct your  
12       attention to page 93.

13                      And I believe you testified  
14       earlier that you read this report before you  
15       went to the NTSB hearing.

16                      Correct?

17               A.       Yeah, I think this was that --  
18       this was their draft in early June, yes,  
19       ma'am.

20               Q.       And I think you started by  
21       telling Mr. Gomez that with respect to the  
22       last paragraph on page 94, that as soon as  
23       you saw what's referenced there, that the  
24       SPSI president and SRS project manager told  
25       IC that if at any point the tank car rose to

1 150 degrees, for safety reasons they would  
2 withdraw personnel from the area and stop any  
3 attempt to mitigate, and that they also went  
4 on to tell the incident command that should  
5 the temperature in the tank car reach 153 to  
6 158, the result would be rapidly increasing  
7 temperature and uncontrolled polymer  
8 reaction.

9 Correct?

10 A. That's what's written in the  
11 report.

12 Q. And you said, I read it, it was  
13 wrong, I never said that, and I wanted to  
14 correct that.

15 A. Exactly.

16 Q. Okay. But you didn't only read  
17 that paragraph; you read the whole report.

18 Is that fair?

19 A. I can't say I read the entire  
20 report bumper to bumper, but the sections  
21 that, you know --

22 Q. The sections that applied to  
23 you, at least?

24 A. Yes, ma'am.

25 Q. Okay. And that paragraph is in

1 Section 8.5.

2 Right?

3 If we can go to the prior page,  
4 Mike. Or the top -- there you go.

5 And it's under a section titled  
6 "Decision to Conduct the Vent and Burn of  
7 Vinyl Chloride Tank Cars."

8 Right?

9 A. Yes.

10 Q. And the very first sentence of  
11 that says, "The East Palestine, Ohio, chief  
12 incident commander, IC, told NTSB  
13 investigators that on February 5th of 2023 at  
14 4:47" -- I'm sorry, "17:47," which is 5:47 in  
15 the evening, "the SPSI president and the SRS  
16 project manager notified the IC about  
17 temperature data concerns regarding the vinyl  
18 chloride tank cars."

19 Right?

20 A. Well, that's what's written in  
21 this. That is what's written here.

22 Q. Okay. And it says that the  
23 SPSI president, you, and the SRS project  
24 manager notified incident command about the  
25 temperatures.

1                   Is that -- should that be  
2   Norfolk Southern only?

3           A.       Norfolk Southern initiated that  
4   meeting with the commander that afternoon.  
5   Both SRS and SPSI, myself and Chip, were  
6   there supporting Norfolk Southern's  
7   conversations with the chief.

8                   And, you know, again, I'm going  
9   to say the same thing. I never told the  
10   chief anything about the 60 to 80 degrees  
11   Fahrenheit thing, again, because I believe  
12   they were bogus data.

13                   I can't speak to what Norfolk  
14   Southern may have told the chief and the  
15   chief believed that we said that, but it was  
16   not us that said that.

17           Q.       Okay. Now, if you go down  
18   further in the paragraph, it says, "The IC  
19   told NTSB investigators" -- I'm sorry, last  
20   paragraph, first sentence -- "that on  
21   February 6, 2023, at about 10 a.m., Ohio  
22   Governor DeWine arrived at the East Palestine  
23   incident command post."

24                   Did you ever have any  
25   conversations with Governor DeWine?



1           A.       Yes, ma'am.

2           Q.       And I mean in connection with  
3       the incident at the time, just to be clear.

4           A.       That's the only time I ever met  
5       the gentleman.

6           Q.       Okay. Fair enough.

7                       Shortly after lunch, or  
8       mid-afternoon, a meeting occurred in the ICP  
9       between all stakeholders, estimated 60 to a  
10      hundred individuals, including with Ohio  
11      Governor DeWine and his staff, Pennsylvania  
12      Governor Shapiro, several other politicians,  
13      Norfolk Southern, federal and Ohio EPA,  
14      Pennsylvania Department of Environmental  
15      Protection, the Ohio Department of Health,  
16      the National Guard, CTEH, and Beaver County  
17      and Columbiana County Ohio emergency  
18      services.

19                     Right?

20          A.       The timeline on that is not  
21      correct when it says lunch or after lunch.  
22      That would have been before lunch, like late  
23      morning.

24          Q.       But the rest of it in terms of  
25      the participants of the meeting that you were

1 in is accurate.

2 Is that fair?

3 A. Again, the NTSB prepared this.  
4 I have no knowledge of who all was in that  
5 room. So I don't know what agencies were  
6 there, other than the governor and some folks  
7 I recognized from a couple of those agencies.

8 Q. Did you know that the EPA was  
9 there and some emergency responders were  
10 there?

11 A. I wasn't sure who all exactly  
12 was in this room. There was a lot of people  
13 in the room.

14 Q. Okay.

15 A. And my limited -- time in that  
16 room was limited.

17 Q. All right. Fair enough.

18 It goes on to say that  
19 "Governor DeWine led the meeting, which began  
20 with an explanation of the vent and burn  
21 process."

22 Correct?

23 A. I don't remember it beginning  
24 that way, ma'am. I don't.

25 Q. Okay. It then goes on to say

1       that "The SPSI president and SRS project  
2       manager provided a detailed explanation of  
3       why vent and burn was needed and how it could  
4       be accomplished" -- "how it would be  
5       accomplished."

6                       Do you see that?

7               A.       I see it written there, yes,  
8       ma'am.

9               Q.       Is that accurate?

10              A.       Partially.

11              Q.       Okay. Did you, along with  
12       Mr. Day, provide a detailed explanation for  
13       why vent and burn action was needed?

14              A.       That was our understanding for  
15       why we were called to go visit with the  
16       governor. He had some questions for us on  
17       these questions.

18                      And as we started to go down  
19       this path, he kind of abruptly interrupted  
20       and didn't let us finish.

21              Q.       Okay. Did you provide any  
22       explanation for why vent and burn was needed?

23              A.       Yes, ma'am.

24              Q.       Okay. Now, if you go to the  
25       next page, middle of the paragraph, it says,

1 "According" -- I'm sorry, third paragraph,  
2 middle of the paragraph.

3 "According to the incident  
4 command, the SPSI president and SRS project  
5 manager insisted that he had only 13 minutes  
6 to decide whether to allow the vent and burn  
7 to proceed because they wanted to begin at  
8 5 p.m." --

9 A. 3 p.m.

10 Q. I'm sorry, "15:00," 3 p.m.

11 A. Yes, ma'am.

12 Q. -- "and before sunset to avoid  
13 the effects of atmospheric temperature  
14 inversion and allow the vapor cloud to  
15 disperse."

16 Is that an accurate statement?

17 A. Again, partially.

18 Q. Okay. Let's break it down  
19 then.

20 Did you inform anybody,  
21 including Governor Devine -- DeWine, excuse  
22 me, that the operations had to begin -- or  
23 you wanted them to begin by 3 p.m.?

24 A. That was our goal, yes, ma'am.

25 Q. And was there a discussion that

1       there were only 13 minutes left to allow the  
2       vent and burn to proceed because of what time  
3       it was?

4             A.       I remember that conversation  
5       vividly.

6             Q.       Okay. Did you express that  
7       view of there being only 13 minutes left?

8             A.       That was me, ma'am.

9             Q.       Okay. And tell us what you  
10      said about there being 13 minutes left.

11            A.       The context and the timing in  
12      which that statement was made by me was after  
13      a -- what I felt was a significant time and  
14      momentum delay that had been caused by  
15      leaving the job site when we were ready to  
16      get Jason Poe's guys going to come to the  
17      command post, have this meeting with the  
18      governor.

19                    And what's not presented here  
20      is the time it took to get some air modeling  
21      that had been given to him, that was  
22      inaccurate, kind of redone and reconsidered  
23      by the command staff.

24                    So when he came back into the  
25      room, it was a different room at that point.

1 And I don't remember the timeline. Whether  
2 it was 30 minutes or an hour and a half, I  
3 don't recall.

4 What I do recall, that was  
5 after lunch. That was kind of like between  
6 12 and 12:30, and he was laser-focused on a  
7 12:30 press release.

8 I interrupted. I said,  
9 Governor, all due respect, I said, we need to  
10 do this before dark. We need at least three  
11 hours to set up.

12 That was the context in which I  
13 said this. So that's the -- that is me. It  
14 was me that said it.

15 But quite frankly, we had  
16 already lost time that day. He was going to  
17 go on a press -- I just didn't feel like, are  
18 we going to really wait for a press  
19 conference before command makes a decision.

20 At that point, he and the fire  
21 chief collectively had a conversation, and we  
22 were authorized to go.

23 Q. Okay. So the reference to the  
24 13 minutes to decide, do you know where that  
25 comes from?

1           A.       You'd have to ask the NTSB.

2           Q.       I will tell you that if you  
3       look further up, it notes there that they had  
4       to wait for corrected data in connection with  
5       the plume model. So it is referenced there.

6                    But what I'm curious about is,  
7       it was your view that a decision needed to be  
8       made very quickly on February 6th with  
9       respect to vent and burn taking place that  
10      day.

11                   Correct?

12          A.       Can you reask -- I'm sorry, I  
13      just --

14          Q.       Sure.

15          A.       Can you reask your question?  
16      Just rephrase -- don't rephrase. Just ask it  
17      again, I'm sorry.

18          Q.       It was your view on  
19      February 6th that a decision needed to be  
20      made very quickly as to whether there was  
21      going to be a vent and burn operation.

22                   Correct?

23          A.       I'm going to just preface my  
24      answer with my understanding that that  
25      decision had already been made, Sunday, after

1 the command staff meeting with the incident  
2 commander.

3 My understanding was, we were  
4 marching orders, get it going, get it done.  
5 And my push for the 13 minutes was only -- I  
6 was concerned if this would have waited till  
7 dark, that environmental conditions could  
8 have and probably would have had a potential  
9 to be worse if we didn't have daylight and  
10 atmospheric conditions in the favor of the  
11 burn. So --

12 Q. So --

13 A. -- that's my honest and correct  
14 answer.

15 Q. Okay. So the decision had been  
16 made already from the prior day, is your  
17 testimony.

18 Correct?

19 A. That was my understanding.

20 Q. Okay. And after the decision  
21 was made, your team continued to go out and  
22 collect temperature data.

23 Correct?

24 A. At the request of our customer,  
25 yes, ma'am.



1           Q.       And so even though there's  
2       already been a decision that we're going to  
3       vent and burn.

4                    Correct?

5           A.       (Gestures.)

6           Q.       You're continuing to collect  
7       temperature data that you think is  
8       unreliable?

9           A.       That's correct.

10          Q.       And the reason you decided to  
11       recommend vent and burn on February 5th was  
12       because you believed there was polymerization  
13       taking place.

14                    Correct?

15          A.       I believe there was every  
16       potential for polymerization taking place.

17          Q.       I want to explore that a little  
18       bit.

19                    Did you believe that  
20       polymerization was actually taking place or  
21       that the potential existed for there to be  
22       polymerization?

23          A.       Both.

24          Q.       Okay. So you believed on  
25       February 5th that the tank -- the VCM in the

1 tank cars were actually polymerizing.

2 Correct?

3 A. Specifically, the four other  
4 than the TILX car. Not the TILX car. I felt  
5 that was behaving itself.

6 Q. Fair enough.

7 You believed the TILX402025  
8 car, the white car, as has been called, that  
9 one was not actually polymerizing on  
10 February 5th.

11 Correct?

12 A. We don't believe so, no.

13 Q. Okay. But you believed that  
14 the other four tank cars were already  
15 polymerizing on February 5th.

16 Correct?

17 A. For clarity, I believe that at  
18 least two of them were --

19 Q. Which two?

20 A. -- and that the other two, by  
21 process of same conditions, same environment,  
22 a probability of. That's why I said both.

23 The car on the west that I  
24 personally --

25 Q. Let me give you Exhibit 6 here,

1 and if you could give me the car numbers.

2 A. Okay. The 55th car, referenced  
3 as OCPX80370, is what I call the west car.

4 Q. Okay.

5 A. Excuse me.

6 Q. And that's the one that was the  
7 temperature reading of 135 that you told us  
8 about.

9 Correct?

10 A. The one that I couldn't hold my  
11 hand on. It was too hot to hold, yes, ma'am.

12 Q. Okay. Which other one?

13 A. I'm just looking at the car  
14 number here.

15 The 30th car, identified as  
16 OCPX80179. That's the one that behaved the  
17 way it did on Saturday afternoon. Suddenly  
18 and violently, with exponential more  
19 pressure, force, sustaining relief at the end  
20 of the day Saturday.

21 Q. That's the one that had the  
22 70 minutes of --

23 A. Yes, ma'am.

24 Q. -- the PRD going off that you  
25 described.

1 Correct?

2 A. Yes, ma'am.

3 Q. Okay. Other than those two,  
4 had you formed a view as to whether GAT --  
5 strike that.

6 Had you formed a view on  
7 February 5th as to whether GATX95098, my  
8 client's car, was actually polymerizing on  
9 February 5th?

10 A. It was sustained even more. If  
11 you look at the source of the pool fires just  
12 west of that car with all the -- the 111 cars  
13 piled up against it that were fuel-feeding  
14 those pool fires under those three cars,  
15 yeah, it -- those two cars, the GATX car and  
16 the other OCPX car, it was that -- in the --  
17 in the same pool fire conditions. This is  
18 behaving this way. There's a probability and  
19 a possibility that the other two could be as  
20 well.

21 Q. So I'm not sure which of those  
22 it is, because I asked you at the beginning,  
23 which cars did you think were polymerizing on  
24 February 5th.

25 And you told me at least two.

1       You believed two cars were polymerizing on  
2       the 5th.

3                       Correct?

4           A.       Yes, ma'am.

5           Q.       Now I'm asking you the third  
6       car, GATX95098. On February 5th,  
7       Mr. McCarty, did you believe that that tank  
8       car was already polymerizing?

9           A.       I believe when its PRD quit  
10       going off, that it could be.

11          Q.       Okay. Could be is different  
12       than is.

13                    Correct?

14          A.       There's no absolutes in  
15       emergency response.

16          Q.       Okay.

17          A.       You know, we've already  
18       identified, couldn't get samples, couldn't  
19       get good temperature readings. There was a  
20       lot we could not assess.

21          Q.       Okay. So you believed that  
22       that car could have been polymerizing,  
23       GATX95098.

24                    Correct?

25          A.       Yes.

1           Q.       Now, with respect to that car,  
2       do you know whether that car had remained  
3       intact post-derailment?

4           A.       Yes. It never showed any signs  
5       of leaking, other than the fires from the  
6       protective housing.

7           Q.       And we're going to talk a  
8       little bit more about that car, but just to  
9       be clear, did you form an opinion as to  
10      whether GATX95098 performed as it was  
11      designed, which you told us yesterday meant  
12      that you'd expect it to hold together?

13          A.       Your question is performed as  
14      designed. There's a lot of performance  
15      factors, and that was with regard to  
16      specifically the TILX car that didn't leak.

17          Q.       Did the GATX95098 car leak?

18          A.       Well, when the pressure relief  
19      device activated and it was relieving  
20      flammable vapor and caught fire with all the  
21      pool fires igniting it, and then it melted  
22      out all the other elastomers and added more  
23      three-dimensional, fuel-fed fire, essentially  
24      the service equipment did fail and have leaks  
25      that fueled the fires.

1 Q. Okay. Let's break that down.

2 After sustaining hours of fire,  
3 at that point some of the service equipment  
4 stopped functioning, is what you're saying.

5 Correct?

6 A. Yes.

7 Q. Other than any release from the  
8 service equipment that melted, the elastomers  
9 that may have melted after being in fire for  
10 hours, did the tank car itself remain intact?

11 A. The tank car itself, the  
12 package of the shell of the tank car, did not  
13 leak.

14 Q. Okay. Did you form an opinion  
15 as to whether GATX95098 performed as it was  
16 designed, even if that meant that some of the  
17 elastomers melted after being in a fire for  
18 hours?

19 MR. HANSON: Objection.

20 THE WITNESS: I did not form an  
21 opinion about any of those cars  
22 afterwards.

23 QUESTIONS BY MS. KARIS:

24 Q. And you don't have an opinion  
25 sitting here today.

John Andrew McCarty

1 Is that correct?

2 MR. LEVINE: Same objection.

3 THE WITNESS: No, ma'am.

4 QUESTIONS BY MS. KARIS:

5 Q. Okay. So now I want to go back  
6 to the discussion of whether there was actual  
7 polymerization at the time that you were  
8 expressing your view that there was a very  
9 short window to vent and burn on  
10 February 6th.

11 I believe you testified --  
12 strike that.

13 So is it accurate, Mr. McCarty,  
14 to say that on February 6th, before the vent  
15 and burn took place, you were present for  
16 discussions with at least Governor Divine and  
17 other -- DeWine, excuse me, and other members  
18 of the incident command?

19 A. Again, I don't remember who all  
20 was in that room, ma'am. There was a lot of  
21 people in that room. I don't remember who  
22 all was in there, and I certainly didn't know  
23 them all.

24 Q. Okay. Do you know whether you  
25 were the first one to recommend vent and



1 burn --

2 A. The word "recommend" --

3 Q. -- for the East Palestine  
4 incident?

5 A. -- is not my first -- I'm  
6 sorry, let you finish your question.

7 Q. Go ahead.

8 It's not your first choice of  
9 words?

10 A. Well, I mean, the honest answer  
11 is, when we came out of that -- when that one  
12 car, this 30th car, behaved the way it did  
13 late in the day, the first conversation --  
14 when you asked was the first  
15 recommendation -- is -- if I can repeat  
16 your -- I guess was the first, I think is  
17 what I picked up --

18 Q. Were you the first one to  
19 recommend vent and burn?

20 A. Okay. The first. When you  
21 said "first" is what grabbed me, not  
22 "recommend."

23 So when we got everybody in the  
24 clear, rallied up back at our ops trailer,  
25 Scott Deutsch, Scott Gould and myself, I just

1 presented that as, gentlemen, I think we've  
2 just lost hot-tapping. I said, we got to  
3 think through this. That was the first  
4 conversation.

5 Q. Okay. And after the "thinking  
6 through this" that you just identified, who  
7 first came to the conclusion, to your  
8 knowledge, that vent and burn is the way to  
9 go here?

10 Because you told me that  
11 decision was made on February 5th.

12 MR. LEVINE: Objection.

13 THE WITNESS: Can you say your  
14 question again?

15 QUESTIONS BY MS. KARIS:

16 Q. Sure. It was a terrible  
17 question.

18 Who first came to the  
19 conclusion, to your knowledge, that vent and  
20 burn was the way to go on February 5th?

21 MR. LEVINE: Objection.

22 THE WITNESS: I don't know.

23 There was, I mean, a lot of Norfolk  
24 Southern staff, myself, Chip Day,  
25 Terry Rockwell. I don't know who

1 ultimately concluded -- I don't know.

2 QUESTIONS BY MS. KARIS:

3 Q. Do you know approximately what  
4 time you finished that discussion about,  
5 gentlemen, hot-tap, not really an option  
6 anymore?

7 A. It would have been within an  
8 hour after we got everybody -- from whatever  
9 time that PRD activated, it was not long  
10 after that. Within the next hour or so.

11 Q. Okay. And how long was that  
12 after you had had the conversation with Oxy  
13 in which their folks were saying from Dallas  
14 that there is no polymerization taking place?

15 MR. LEVINE: Objection.

16 THE WITNESS: Yeah, that  
17 conversation from Oxy never occurred  
18 yet at that point.

19 QUESTIONS BY MS. KARIS:

20 Q. Okay. Let's switch gears a  
21 little bit.

22 A. Can we take five?

23 MS. KARIS: Sure.

24 THE WITNESS: Can we take a  
25 five-minute break?

1 MS. KARIS: Absolutely.

2 VIDEOGRAPHER: We are off the  
3 record at 10:54.

4 (Off the record at 10:54 a.m.)

5 VIDEOGRAPHER: We are back on  
6 the record at 11:07.

7 QUESTIONS BY MS. KARIS:

8 Q. Mr. McCarty, I believe you just  
9 testified that you believed no later than  
10 February 5th that there was polymerization  
11 occurring.

12 Correct?

13 A. I believe there was a high  
14 chance of that, yes, ma'am.

15 Q. Okay. Now, you testified  
16 earlier that you have seen results of some  
17 samples that were taken in March of 2023 that  
18 looked for the issue of polymerization.

19 Correct?

20 A. I have seen those tables of  
21 data that the NTSB produced, yes.

22 Q. Okay. And what those tables of  
23 data indicate is based on the testing that  
24 was performed, there was no polymerization.

25 Correct?

1           A.       That's what they --

2                   MR. LEVINE:  Objection.

3                   THE WITNESS:  That's what they  
4           seem to indicate.

5   QUESTIONS BY MS. KARIS:

6           Q.       Okay.  You have not studied  
7   that data or those results, other than  
8   reading them.

9                   Correct?

10          A.       That's correct.

11          Q.       You haven't done any  
12   independent testing of those results.

13                  Correct?

14                  I mean of -- strike that.

15                  You haven't done any  
16   independent analysis of those results.

17                  Correct?

18          A.       No, ma'am.

19          Q.       Okay.  And you haven't taken  
20   any samples yourself.

21                  Correct?

22          A.       Correct.

23          Q.       You haven't undertaken any  
24   study to see whether the decision that you --  
25   strike that.

1                   You haven't undertaken any  
2     study to determine whether your belief that  
3     polymerization was or could have been  
4     occurring on February 5th was accurate.

5                   Correct?

6           A.       No, I've never done any  
7     follow-up. No, I -- no is the answer. No.

8           Q.       The only data that exists with  
9     respect to whether, in fact, polymerization  
10    was taking place that you're aware of is  
11    Oxy's testing.

12                  Correct?

13          A.       That's my understanding.

14          Q.       And that data reaches the  
15    opposite conclusion of what your belief was.

16                  Correct?

17                  MR. LEVINE: Objection.

18                  THE WITNESS: It seems to  
19                   indicate that no polymerization had  
20                   occurred.

21    QUESTIONS BY MS. KARIS:

22          Q.       Now, we talked a lot about the  
23    temperature readings and your belief that  
24    they were bogus.

25                  Correct?

1           A.       Yes.

2           Q.       Okay.  Would you agree with me  
3       that if those temperature readings were  
4       accurate, those temperature readings were  
5       supportive of a conclusion that there was no  
6       polymerization taking place?

7                   MR. LEVINE:  Objection.

8                   THE WITNESS:  If those readings  
9       would have been indicative of the tank  
10      and internal temperatures, with a big  
11      if, they would have trended similar to  
12      the TILX car to the east.

13      QUESTIONS BY MS. KARIS:

14           Q.       Let me go back to my question.  
15      I didn't ask you about the TILX car.

16                   Do you agree that if those  
17      temperature readings taken on February 5th  
18      and February 6th, almost on an hourly basis,  
19      if those were accurate, those support a  
20      conclusion that there was no polymerization  
21      taking place post-derailment in East  
22      Palestine?

23                   MR. LEVINE:  Objection.

24                   THE WITNESS:  Yeah, it's a  
25      broad-brush not defining tank cars.

1                   The one on the west, because I  
2                   personally couldn't hold my hand on  
3                   the metal of that car and know how hot  
4                   it was, I mean, I'm going to certainly  
5                   keep that separate from my response to  
6                   this.

7                   It was the three cars in the --  
8                   behind Leake Oil, referred to as the  
9                   29th, 30th and 31st car, in which the  
10                  reported temperature readings that I  
11                  absolutely believe were not accurate  
12                  of the tank car temperatures.

13                  With the hypothetical that you  
14                  asked -- you asked the hypothetical.  
15                  If we could have gotten internal  
16                  readings of the product in the cars,  
17                  then I concur with the science that  
18                  those temperatures would have  
19                  corresponded to normal handling  
20                  pressure curves of vinyl chloride.

21       QUESTIONS BY MS. KARIS:

22                  Q.       You called it the hypothetical.

23                  A.       Well, it is hypothetical,  
24       ma'am.

25                  Q.       Okay. To be clear, there are



1 temperature readings taken on February 5th  
2 and 6th.

3 Correct?

4 A. Temperature readings were  
5 taken, yes, ma'am.

6 Q. You disagree with the  
7 reliability of those temperature readings.

8 Correct?

9 A. I disagree that they were not  
10 representative of the temperatures in those  
11 tank cars.

12 Q. And if those temperature  
13 readings --

14 A. I think I might have misspoke  
15 there. I got to be careful of how I just  
16 spoke that.

17 The temperature readings that  
18 were collected on those three tank cars,  
19 29th, 30th and 31st tank cars, never had any  
20 contact with the tank shell itself and  
21 certainly not the product inside.

22 So I have to keep staying  
23 grounded in the facts, despite how you ask a  
24 question. So I know that's a long way to  
25 answer, and I didn't mean -- if I interrupted

1       you, I apologize.

2               Q.       Grounded in facts or otherwise,  
3       if those readings taken on February 5th and  
4       6th of the tank cars that were reading  
5       65 degrees or 62 degrees, of those tank cars,  
6       if those were accurate, that would be  
7       supportive of no polymerization.

8               Correct?

9               MR. LEVINE:   Objection.

10              THE WITNESS:   You're asking me  
11              a hypothetical "if."

12       QUESTIONS BY MS. KARIS:

13              Q.       Yes.

14              A.       And I'm stating a fact that the  
15       data for those cars was not accurate.   So  
16       you're asking me a hypothetical.

17              Q.       I'll accept that it's a  
18       hypothetical in your eyes.

19                      Would you agree, though, that  
20       that would be supportive of no  
21       polymerization?

22                      Yes or no, if you can say.

23              MR. LEVINE:   Objection.

24              THE WITNESS:   I believe I  
25              already answered that a few minutes

1                   ago, ma'am.

2           QUESTIONS BY MS. KARIS:

3                   Q.       Okay. Let's go now to what you  
4           have done to verify whether in fact there was  
5           polymerization taking place on February 5th  
6           and 6th.

7                               What have you done since then,  
8           if you will? Have you done anything?

9                   MR. LEVINE: Objection.

10                  THE WITNESS: No. No.

11           QUESTIONS BY MS. KARIS:

12                  Q.       Okay. You are not an engineer.  
13                               Correct?

14                  A.       No.

15                  Q.       Is that correct?

16                  A.       That's correct.

17                  Q.       And you have no formal  
18           engineering education.

19                               Correct?

20                  A.       That's correct.

21                  Q.       You are not a polymer chemist.  
22                               Correct?

23                  A.       That's correct.

24                  Q.       In fact, you're not a chemist  
25           at all.

1 Correct?

2 A. That's correct.

3 Q. You don't hold yourself out to  
4 be an expert in chemistry.

5 A. That's correct.

6 Q. You don't hold yourself out to  
7 be an expert in polymerization.

8 Correct?

9 A. That's correct.

10 Q. You don't hold yourself out to  
11 be a subject matter expert in vinyl chloride.

12 Correct?

13 A. Correct.

14 Q. And you don't hold yourself out  
15 to be an expert in polymerization of vinyl  
16 chloride.

17 Correct?

18 A. Correct.

19 Q. Of the folks from Norfolk  
20 Southern that you identified who were  
21 involved in the discussion as to whether  
22 polymerization was taking place, do you know  
23 any of them to be an expert in vinyl  
24 chloride?

25 A. No, I'm not aware of that.

1           Q.       The folks that you were  
2       speaking to that were involved in the  
3       discussion on whether to vent and burn, do  
4       you know any of them to be subject matter  
5       experts on polymerization of vinyl chloride?

6           A.       Can you rephrase the -- you're  
7       asking about the Norfolk Southern staff? I  
8       guess I got it -- can you rephrase the  
9       question?

10          Q.       Sorry, let me reask. Terrible  
11       question.

12                   The folks that you spoke to at  
13       Norfolk Southern regarding whether or not you  
14       should vent and burn and whether or not  
15       polymerization was taking place, do you  
16       consider any of them to be experts in  
17       polymerization of vinyl chloride monomer?

18          A.       No.

19          Q.       Do you consider any of them to  
20       be an expert in vinyl chloride monomer,  
21       period, regardless of polymerization?

22          A.       No.

23          Q.       You testified early yesterday  
24       that you attend meetings at The Chlorine  
25       Institute where VCMs are discussed.

1 Correct?

2 A. Yes.

3 Q. And I think you said you've  
4 attended roughly 25 to 30 such sessions?

5 A. Over the years, that's probably  
6 a good estimate.

7 Q. And just ballpark, how long is  
8 each session?

9 A. The programs are generally a  
10 week-long training session.

11 Q. Okay. And of that week-long  
12 training session, how much of it is dedicated  
13 to talking about VCMs and polymerization?

14 A. Usually just a segment. In  
15 certain years it would just be like a --  
16 probably less than an hour presentation, and  
17 other years it's that plus case-study  
18 sharing, stuff like that.

19 Q. Okay. So is it fair to say  
20 that in those 25 to 30 sessions that you've  
21 attended, each session spends between one to  
22 two hours speaking of the subject of VCM and  
23 polymerization?

24 A. I think that would be a fair  
25 estimate.

1 Q. Okay. And you testified  
2 yesterday that there was a difference between  
3 stabilized VCM versus VCM involved in a  
4 derailment.

5 Did I hear that correctly?

6 MR. LEVINE: Objection.

7 THE WITNESS: Yeah. I can't  
8 remember the exact discussion  
9 yesterday, ma'am. I'm sorry, I don't  
10 remember the exact discussion  
11 yesterday.

12 QUESTIONS BY MS. KARIS:

13 Q. Fair enough.

14 In the one- to two-hour  
15 presentations that you participate in at The  
16 Chlorine Institute, how much of that time is  
17 spent on discussing whether VCM involved in a  
18 derailment can or would polymerize?

19 A. It's certainly part of those  
20 presentations, yes.

21 Q. How much of that time, is the  
22 question? Ballpark.

23 A. I honestly -- it's probably its  
24 own slide or within a slide of chemical  
25 characteristics. So somewhere between 5 and

1 15 minutes, depending on the presenter.

2 Q. Mr. McCarty, have you ever  
3 published in a peer-reviewed journal?

4 A. A peer-reviewed journal? No,  
5 ma'am.

6 Q. Have you ever published  
7 anything in any context that you shared with  
8 the public on VCM and polymerization?

9 A. I'm sorry, your question again?  
10 When you say "the public," I  
11 don't know if that Senate Commerce Committee  
12 characterizes that. I'm not sure what  
13 you're -- can you --

14 Q. Any published -- sure.  
15 Something that the general  
16 public -- because you said you give these  
17 presentations at The Chlorine Institute.

18 Correct?

19 A. Okay.

20 Q. But they provide you the  
21 content, is what I heard you say yesterday.

22 Correct?

23 A. Yes, ma'am. Yes, ma'am.

24 Q. Have you ever drafted content  
25 about VCM and polymerization?



1           A.       I don't think -- no, I don't  
2       remember doing any of that. Anything -- that  
3       would have been a Chlorine Institute  
4       document.

5           Q.       And that, you told us, they  
6       gave you the content, and you present it.

7                    Correct?

8           A.       Yes, ma'am.

9           Q.       And I'm asking whether you've  
10       ever authored anything that you've presented  
11       either to a trade group, industry  
12       organization or any other context that speaks  
13       to the subject of polymerization of VCM.

14          A.       I can't recall anything, no.

15          Q.       Okay. Let's talk about vent  
16       and burn.

17                    Have you ever published  
18       anything regarding vent and burn?

19          A.       No.

20          Q.       By the way, are you aware of  
21       anyone that was in East Palestine from  
22       February 3rd to February 6th that had had  
23       prior experience with vent and burn  
24       operations in a populated area involving  
25       vinyl chloride monomer?

1           A.       Not in vinyl chloride, no,  
2       ma'am.

3                   Well, populate -- Chip -- let  
4       me clarify that. Chip, as a young  
5       technician, participated in Livingston,  
6       Louisiana, that I was aware of, but I  
7       can't -- I don't think Livingston was  
8       necessarily a heavily populated area. So  
9       that's the qualifier to your question in my  
10      answer.

11           Q.       The vent and burn operations in  
12      East Palestine were in a populated area.

13                   Correct?

14           A.       Yes, ma'am.

15           Q.       Okay. Yesterday you mentioned  
16      Mr. Polymer -- Mr. Palmer, excuse me, in  
17      response to a question you were asked about  
18      who had prior experience of vent and burn of  
19      VCM in a community.

20                   But when I went back and looked  
21      at the transcript, I wasn't sure if you were  
22      answering the question asked.

23                   So anybody from your team, from  
24      those 35, 45 employees who have worked on  
25      this incident, that had any prior experience

1 in vent and burn of vinyl chloride monomer in  
2 a community?

3 MR. LEVINE: Objection.

4 THE WITNESS: No, ma'am.

5 QUESTIONS BY MS. KARIS:

6 Q. I want to ask you about  
7 polymerization and your understanding and  
8 familiarity with it, recognizing you're not a  
9 subject matter expert.

10 You testified yesterday that  
11 you understood that nitrogen had been  
12 introduced by Oxy to purge oxygen from the  
13 tank cars before they were loaded for  
14 transport.

15 Correct?

16 A. My understanding from Oxy is  
17 they pad it with nitrogen after loading.

18 Q. After loading.

19 So they load, and then they pad  
20 with nitrogen.

21 Correct?

22 A. That was my understanding.

23 Q. Okay. And what that does is it  
24 purges the oxygen.

25 Correct?

1           A.       Yes.

2           Q.       Do you know, with that oxygen  
3       in the vessel, whether an inhibitor would  
4       cause -- what inhibitor would cause  
5       polymerization and whether it -- let me start  
6       one at a time. Bad question.

7                   Without oxygen in the vessel,  
8       or purged -- strike that.

9           You had agreed, I believe,  
10       yesterday with Mr. Gomez that the  
11       introduction of nitrogen results in expelling  
12       oxygen to a degree of less than 200 parts per  
13       billion.

14                   Correct?

15                   MR. LEVINE: Objection.

16                   THE WITNESS: Yeah, that's a  
17       specific that I believe that someone  
18       stated. And I -- you know, I guess I  
19       say nitrogen purging displaces oxygen,  
20       but the rest of that is absolutes that  
21       I'm -- I guess I'm -- what was your  
22       question? I guess that whole --

23       QUESTIONS BY MS. KARIS:

24           Q.       Do you know to what extent or  
25       degree it displaces oxygen?

1           A.       Well, part of that is on any  
2       given project, on any given job, on any given  
3       tank car or tank truck or drum loaded, how  
4       much nitrogen, for how long, always drives  
5       those concentrations down. So the longer  
6       they purge, the more they drive the  
7       concentration of oxygen down.

8           Q.       Do you know what the condition  
9       or circumstances were of the vinyl chloride  
10      monomers that were on the five tank cars that  
11      derailed?

12          A.       So I do remember Oxy shared  
13      some of those details in that call with the  
14      rental car -- in the cab of the rental car  
15      conversation.

16                   And either Terry Rockwell or I  
17      or Chip brought up, like, well, what are your  
18      thoughts when they've been venting since  
19      Friday night? And that's when things got  
20      kind of quiet.

21          Q.       Did anybody mention to you that  
22      Oxy did not believe that heat, or the  
23      introduction of the heat to those tank cars,  
24      was sufficient to polymerize that chemical?

25                   MR. HANSON: Objection.

1 THE WITNESS: There was  
2 somebody on the phone that tried to  
3 tell us things like that that led them  
4 to their belief.

5 And again, we get back to  
6 there's a tremendous amount of heat  
7 here. You're telling us you're only  
8 stabilizing with nitrogen. Nitrogen  
9 left the car on Friday night with the  
10 activation of the pressure relief  
11 devices.

12 So we respect the input. We  
13 understand that's how they stabilize  
14 them at the time of shipment.

15 But what -- we believe that,  
16 you know, there might have been a  
17 disconnect in engineering thoughts  
18 from, you know, someone sitting, you  
19 know, 2,000 miles away. We believe  
20 that they just weren't grasping that  
21 we didn't believe nitrogen was in the  
22 car anymore because of the conditions  
23 in the field.

24 QUESTIONS BY MS. KARIS:

25 Q. I want to talk a little bit

1 about that then.

2 You reached the conclusion,  
3 even before you spoke to Oxy, that nitrogen  
4 had left the cars Friday night with the  
5 activation of the PRVs.

6 Correct?

7 MR. LEVINE: Objection.

8 THE WITNESS: That is a factual  
9 behavior in any purged tank car in any  
10 condition like that. Anything in the  
11 vapor space is a purged gas. It's the  
12 first thing to leave the car when a  
13 PRD activates.

14 QUESTIONS BY MS. KARIS:

15 Q. Mr. McCarty, respectfully,  
16 rather than you speaking for the world, I  
17 would like you to tell me what your belief  
18 was.

19 So it was your view on Friday  
20 night, that would be February 3rd, that  
21 nitrogen had left the cars with the  
22 activation of the PRV.

23 Is that correct?

24 A. Any purged gas would have left  
25 the car in those behaviors, yes, ma'am.

1           Q.       All right. Now, and you  
2       believe that the pressure relief valve  
3       devices activating is what caused the  
4       nitrogen to go right out of the car into the  
5       atmosphere.

6                       Correct?

7           A.       That would have been the --  
8       what we call the top phase gas. The  
9       specific -- or the vapor density of vinyl  
10      chloride is heavier than nitrogen. Nitrogen  
11      would have been a purged gas on top of the  
12      vinyl chloride.

13          Q.       Okay.

14          A.       It would have been the first to  
15      leave the car.

16          Q.       Okay. So now I want to explore  
17      the concept of the PRD driving nitrogen right  
18      out of the car to the atmosphere.

19                    You agree that these tank cars  
20      were under pressure post-derailment.

21                    Correct?

22          A.       Yes.

23          Q.       There was no breach of the tank  
24      cars post -- immediately post-derailment  
25      until the vent and burn operations.



1 Correct?

2 MR. LEVINE: Objection.

3 THE WITNESS: Correct.

4 QUESTIONS BY MS. KARIS:

5 Q. You agree that post-derailment,  
6 when the PRDs were activating, it was the  
7 introduction of heat, or the fire, that was  
8 generating pressure inside the cars.

9 Correct?

10 A. No, ma'am. Vinyl chloride has  
11 its own vapor pressure. Its chemistry has  
12 its own vapor pressure in the cars.

13 Q. What do you think was causing  
14 the PRDs to activate?

15 A. Early on, the pool fires under  
16 the cars.

17 Q. Okay. And the pool fires under  
18 the cars were generating heat.

19 Correct?

20 A. Yes, ma'am.

21 Q. Okay. And so that heat that  
22 was being introduced through those pool fires  
23 under the cars was increasing the pressure in  
24 the tank cars that were intact.

25 Correct?

1           A.       Yes, ma'am.

2           Q.       Okay. And so what you have is  
3       the pressure relief valve activating, so  
4       you've got pressure from inside the tank  
5       going out with the release of the PRV.

6                    Correct?

7           A.       Yes, ma'am.

8           Q.       And that's because the pressure  
9       inside is higher than the pressure outside of  
10      that tank car.

11                   Correct?

12          A.       Because -- I'm sorry, maybe  
13      that's a twofold question.

14          Q.       Would you agree with me that  
15      the pressure inside the tank cars was greater  
16      than the atmospheric pressure?

17          A.       Oh, yes. Yes. Yes. Yes.  
18      Yes.

19          Q.       And when pressure drops to a  
20      certain level, then the valve closes.

21                   Correct?

22          A.       That's what we observed, yes,  
23      ma'am.

24          Q.       Okay. Was there any point, in  
25      your opinion, when you felt that the pressure

1       inside the vessel wasn't greater than the  
2       pressure outside of the vessel?

3               A.       No. The chemistry of vinyl  
4       chloride, that would be like that every day  
5       of the week.

6               Q.       Okay. So pressure inside  
7       greater than pressure outside.

8                       Correct?

9               A.       Yes.

10              Q.       Intact tank car.

11                      Correct?

12              A.       Yes.

13              Q.       Okay. You agree with me that  
14       you can't have pressure flowing from a higher  
15       pressure area to a lower pressure area.

16                      Is that correct?

17              A.       In concept, yes, ma'am.

18              Q.       Okay. Not only in concept; in  
19       science and physics.

20                      Correct?

21                      MR. LEVINE: Objection.

22                      THE WITNESS: Again, there's --

23                      there's -- I -- there have been  
24                      documented case studies where in  
25                      things like PRD activations, things

1           have been formed in the interface of  
2           oxygen, moisture, at the interfaces of  
3           where chemical vapors release and  
4           things reclose, and in the process of  
5           reclosing, that momentary collection  
6           of moisture or oxygen around that.

7       QUESTIONS BY MS. KARIS:

8           Q.       Tell me where those -- name any  
9           of those case studies for me.

10          A.       I realize it's a broad-brush  
11       statement. That's a combination of a variety  
12       of instructors and customers that have shared  
13       with me over the years.

14                 You know, you see things formed  
15       around a sample jar with crystalline  
16       formation. The jar is closed, but yet that  
17       vapor interface -- the interface of vapor in  
18       the chemistry to the outside atmosphere does  
19       some sort of chemical reaction there.

20                 So it is a --

21          Q.       That jar is not pressurized the  
22       way a tank car is, is it?

23          A.       No, ma'am.

24          Q.       Okay. So tell me a situation  
25       where a tank car that is pressurized has an

1 incident that you're aware of where higher  
2 pressure flows to lower pressure area.

3 A. Ma'am, I'm going on a variety  
4 of customer travels.

5 In my travels, they share case  
6 studies of things getting gummed up, plugged  
7 up, and they've explained it to me that at  
8 the interface of a release, conditions can  
9 change at that interface, is what I've been  
10 taught in my travels. And I'm sorry, I don't  
11 have a specific reference for you.

12 Q. Have you ever received any  
13 training, formal training -- not what  
14 customers tell you they think happened; any  
15 formal training -- that supports the  
16 proposition that in a pressurized vessel you  
17 can have pressure flowing from a higher  
18 pressure area to a lower pressure area?

19 A. No formal training as such, no,  
20 ma'am.

21 Q. Have you read any peer-reviewed  
22 studies that support the proposition that you  
23 can have pressure flowing from a higher  
24 pressure area to a lower pressure area in a  
25 pressurized vessel such as a tank car?

1           A.       No, ma'am.

2           Q.       Okay. Leaving aside then what  
3       your customers may have anecdotally told you,  
4       are you aware of any scientifically accepted  
5       principle or study that supports that you  
6       could have pressure flowing from a higher  
7       pressure area to a lower pressure area?

8           A.       No, ma'am.

9           Q.       Okay. You would agree that  
10      fluids flow from a higher pressure to a lower  
11      pressure in a system, correct?

12                   In a pressurized system,  
13      correct?

14          A.       Yes, ma'am.

15          Q.       Okay. When the PRDs were  
16      activated, to your knowledge, at any point  
17      did the pressure outside exceed the pressure  
18      inside to allow for flow into the pressurized  
19      tank cars?

20          A.       No, ma'am.

21          Q.       You agree as a general  
22      proposition that you would need higher  
23      pressure outside to allow for the flow into  
24      the tank cars.

25                   Correct?

1 MR. LEVINE: Objection.

2 THE WITNESS: I'm sorry, can  
3 you please repeat that question? It  
4 was kind of a unique question.

5 QUESTIONS BY MS. KARIS:

6 Q. Sure.

7 You need higher pressure  
8 outside the tank cars than inside the tank  
9 cars to allow for flow into the tank cars.

10 Correct?

11 A. Yes, ma'am.

12 MR. LEVINE: Objection.

13 QUESTIONS BY MS. KARIS:

14 Q. Okay. Mr. McCarty, you  
15 mentioned nitrogen a couple of times.

16 Would you agree nitrogen isn't  
17 being used to stabilize VCM?

18 A. Please repeat your question?

19 Q. Sure.

20 Is it the purging of the oxygen  
21 that causes the stabilization, or is it the  
22 introduction of the nitrogen?

23 A. From what --

24 MR. LEVINE: Objection.

25 THE WITNESS: From what we were

1 told, Oxy was using nitrogen to purge  
2 the oxygen. Nitrogen inert gas.

3 QUESTIONS BY MS. KARIS:

4 Q. Okay.

5 A. So they're one -- it's a means  
6 to an end. They use nitrogen to deplete  
7 oxygen.

8 Q. Right. They use nitrogen to  
9 deplete the oxygen.

10 Correct?

11 A. That's my understanding.

12 Q. But it's the depletion of the  
13 oxygen that causes the stabilization.

14 Correct?

15 A. So we've been told by Oxy, yes,  
16 ma'am.

17 Q. And so when the PRVs are  
18 released and the nitrogen is purged, as you  
19 have told us --

20 Are you with me?

21 A. So far.

22 Q. -- how is nitrogen getting  
23 introduced into the tank car?

24 MR. HANSON: Objection.

25 THE WITNESS: Oxy -- well, I



1           can -- Oxy put it there at the time of  
2           shipping. It was already in the car.

3       QUESTIONS BY MS. KARIS:

4           Q.       But it's in a pressurized  
5       vessel.

6                    Correct?

7           A.       Yes, ma'am.

8           Q.       Oxygen has to flow back into  
9       that pressurized vessel.

10                   Correct?

11                   MR. LEVINE: Objection.

12                   THE WITNESS: No.

13       QUESTIONS BY MS. KARIS:

14           Q.       So it's your view that when the  
15       nitrogen gets purged, the end result is that  
16       the oxygen actually increases in the vessel.

17                   Is that correct?

18                   MR. HANSON: Objection.

19                   THE WITNESS: As I say, every  
20       time that PRD cycles, at the interface  
21       there's absolutely a chance that as  
22       that PRD recloses, atmospheric oxygen  
23       and air influence that sealing  
24       surface. And that active gap opening  
25       with every bad elastomer, everything

1           in the free radicals of fire burning,  
2           that's the fundamental place where it  
3           can occur. And I've been told that by  
4           a number of customers over my years.

5       QUESTIONS BY MS. KARIS:

6           Q.       Okay. So you say there's  
7           absolutely a chance that the PRD, when it  
8           recloses, that introduce -- that that  
9           introduces atmospheric oxygen.

10                   Is that right?

11           A.       We're starting to split hairs  
12           here.

13           Q.       I thought I read back your  
14           answer straight from the transcript.

15           A.       It doesn't have to necessarily  
16           go down into the car, and I never said that  
17           it did. It's the interface where the melted  
18           gaskets, elastomers, in this case, PRD  
19           O-rings, it's at that interface of leak,  
20           super-seated gases, fire and reclosing,  
21           there's a lot of dynamics going on there.

22                   And I've had clients for all my  
23           career in periodic cases of in-the-plant  
24           accidents and -- where they found evidence in  
25           these interface areas, is my combined

1 experience over 30-some years.

2 Q. Leaving aside what your  
3 customers tell you, have you ever done any  
4 studies to determine whether that is  
5 possible?

6 A. No.

7 Q. Have you ever collected any  
8 data or undertaken any scientific analysis to  
9 determine whether that is possible?

10 A. I have not personally, no.

11 Q. You're relying on what your  
12 customers have told you.

13 Is that correct?

14 A. (Witness nods head.)

15 MR. HANSON: You have to say  
16 your answer.

17 THE WITNESS: I'm sorry, yes,  
18 ma'am.

19 QUESTIONS BY MS. KARIS:

20 Q. And do you know what, if any,  
21 studies your customers have undertaken for  
22 this proposition that you introduced about  
23 oxygen being introduced at the interface when  
24 a PRV valve opens and then recloses?

25 MR. LEVINE: Objection.

1 THE WITNESS: I'm sorry,  
2 restate your question.

3 QUESTIONS BY MS. KARIS:

4 Q. Do you know what, if any,  
5 studies your customers have undertaken for  
6 this proposition that they told you about?

7 A. I may not specifically. Just  
8 case studies after the fact and sharing for  
9 safety.

10 Q. Okay. Case studies that they  
11 themselves have performed?

12 A. Yes, ma'am.

13 Q. And have you looked at the  
14 analysis of those case studies?

15 A. Not in detail. Just attended  
16 their training sessions.

17 Q. Right.

18 Have you -- have they published  
19 those case studies in any literature that one  
20 could go see to see if they're reliable?

21 A. I don't know.

22 Q. Have you yourself ever  
23 published or undertaken any study to  
24 determine how polymerization takes place?

25 A. No, ma'am.

1           Q.       I told you at the beginning  
2       that I represent GATX.

3                   Did you know that one of the  
4       vinyl chloride monomer cars that was involved  
5       in the derailment, GATX95098, was owned by  
6       GATX?

7           A.       In my experience, the first  
8       reporting marks generally indicate ownership  
9       of cars, but I guess I know cars can be  
10      bought and sold.

11                  So that would be a presumption  
12      on my part, that General American would own  
13      that car.

14          Q.       Did you ever reach out to  
15      anybody at GATX at any time from February 3rd  
16      of 2023, until today in connection with this  
17      event?

18          A.       No, ma'am.

19          Q.       Have you undertaken any  
20      analysis to determine what, if anything, GATX  
21      did wrong in connection with this incident?

22          A.       No, ma'am.

23          Q.       Sitting here today, you have no  
24      opinion as to whether my client did anything  
25      wrong.

1 Correct?

2 A. I have no opinion on that,  
3 ma'am, no.

4 Q. Okay. Were you aware that  
5 Norfolk Southern sued GATX?

6 A. Only by media announcement  
7 and this subpoena to be here with you today  
8 and yesterday.

9 Q. Okay. Now, did anybody discuss  
10 with you any of Norfolk Southern's -- leaving  
11 aside conversations with lawyers. But did  
12 anybody ever discuss with you any issues with  
13 respect to any paper discrepancies of  
14 GATX95098?

15 A. The only knowledge I had prior  
16 to yesterday and today was Randy Keltz's  
17 testimony in panel 4 in June where I heard  
18 him kind of use the phrase, paper didn't match  
19 car, car didn't match paper.

20 And even to qualify my answer  
21 today, I am not clear on which cars he was  
22 talking about, whether it was a GA and  
23 Occidental or a TILX. I just -- I know that  
24 was out there at the hearings.

25 Q. Fair enough.

1                   So you would agree that  
2     whatever discrepancies Mr. Keltz identified,  
3     whether they exist or not, they had nothing  
4     to do with any of the decisions or  
5     recommendations you made in connection with  
6     the vent and burn operations.

7                   Correct?

8           A.       As we analyzed our tactical  
9     options and discussed those options with the  
10    Norfolk Southern HAZMAT staff, the nuances  
11    of, you know, what was found out after the  
12    fact in terms of car matched paper, paper  
13    matched car, had no bearing on the  
14    discussions with the Norfolk Southern  
15    hazardous materials team during that weekend.

16          Q.       Okay. So just to be crystal  
17    clear, any issues with respect to the  
18    paperwork of GATX95098 had no bearing  
19    whatsoever on any of the discussions that you  
20    had from February 3rd through the time of the  
21    vent and burn operations.

22                  Correct?

23          A.       Speaking for myself personally  
24    and SPSI as a whole, we weren't privy to any  
25    discussions about any of that kind of

1 paperwork.

2 Q. And for all of those thousands  
3 of hours that you have spent on this  
4 project --

5 A. Bless you.

6 Q. -- have you heard anybody say  
7 that they made any decision on February 3rd  
8 through February 6th based on the paperwork  
9 of GATX95098?

10 A. No, ma'am, I never heard those  
11 words.

12 Q. So not only did you not make  
13 any decisions, you haven't even heard anybody  
14 say that any decision was made based on that  
15 paperwork.

16 Correct?

17 A. That's -- correct.

18 Q. You testified yesterday in  
19 response to one question that you had heard  
20 something about the wheel bearing of one of  
21 the cars causing the derailment.

22 Correct?

23 A. Yes, ma'am.

24 Q. You have reached no opinions or  
25 conclusions as to what caused that wheel



1 bearing to fail.

2 Correct?

3 A. No, ma'am.

4 Q. You don't know whether Norfolk  
5 Southern failed to perform a required  
6 inspection that led to that wheel bearing  
7 failure.

8 Correct?

9 A. No, ma'am.

10 Q. And you don't know whether  
11 Norfolk Southern failed to perform a  
12 mechanical inspection on any of those cars  
13 that were in the derailment.

14 Correct?

15 A. No, ma'am.

16 Q. Are you familiar with something  
17 called a wayside detector?

18 A. I learned about them through  
19 East Palestine hearings, that panel that  
20 talked about all that. I learned a lot about  
21 that, just in general.

22 Q. You didn't know anything about  
23 them before then?

24 A. I knew they existed, but in my  
25 role as a hazardous materials emergency

1 responder, environmental contractor, that's  
2 not like the -- you know, I'm not a  
3 railroader that moves freight.

4 Q. All right. A couple more  
5 questions, and I think I'll be out of time  
6 any minute here.

7 You testified yesterday that  
8 you concluded that the valve of a car or  
9 multiple cars had not activated for some time  
10 and that that could have been because the PRD  
11 was gummed up.

12 Do you recall that testimony?

13 A. I can't remember which part of  
14 yesterday's testimony, but if you're -- I  
15 guess can you rephrase your question?

16 Q. Sure.

17 A. I just to make sure I get your  
18 question.

19 Q. I believe you said, at least  
20 with respect to the car that made the hissing  
21 sound that you described that then had the  
22 70-minute consecutive release, you concluded  
23 that that car had a PRV that had been gummed  
24 up.

25 Is that correct?

1 MR. LEVINE: Objection.

2 THE WITNESS: It was one  
3 possibility.

4 And for the clarity of sequence  
5 to your question, the audible hiss  
6 coincided with during that 70 minutes,  
7 not one before the other, just for  
8 clarity.

9 And, yes, that pressure relief  
10 device had been functioning at a much  
11 lower pressure, functioning, cycling,  
12 functioning, cycling, functioning,  
13 cycling, and then didn't. And all the  
14 sudden -- essentially got stuck.

15 QUESTIONS BY MS. KARIS:

16 Q. Okay.

17 A. It was stuck until it was  
18 unstuck.

19 And during a relatively narrow  
20 time window, it had accumulated a whole lot  
21 of pressure in that car when there wasn't an  
22 aggressive pool fire under the car anymore.

23 Q. Okay. Did you reach any  
24 conclusions as to whether the pressure relief  
25 valve for my client's car, 95098, whether

1       that valve had been stuck at any point?

2               A.       "Conclusions" is a strong word.

3       But deductive reasoning and risk management  
4       consideration, the consideration was if the  
5       car right next to it just behaved this way  
6       and had been paralleling behavior for hours  
7       prior, we had to believe for everybody's  
8       safety that the GA car could have done the  
9       same thing at any moment.

10              Q.       Okay.

11              A.       That was our line of thinking.

12              Q.       So what you believed is, it may  
13       have done the same thing at any moment.

14                      Correct?

15              A.       Yes, ma'am.

16              Q.       But you would agree with me,  
17       from February 5th through the time of the  
18       vent and burn on February 6th, you were not  
19       aware of anybody saying that the GATX car  
20       pressure relief valve performed in that same  
21       way.

22                      Correct?

23                      MR. LEVINE:   Objection.

24                      THE WITNESS:   In the same way  
25       as...

1 QUESTIONS BY MS. KARIS:

2 Q. A sudden release, as you  
3 described yesterday, from increased pressure  
4 for an extended period of time.

5 A. I guess I'm going to share  
6 fact-based. It never activated again.

7 Q. Okay.

8 A. But it could have been stuck.

9 Q. Right.  
10 So it could have been stuck.  
11 Correct?

12 A. Yes.

13 Q. But what you do know fact-based  
14 is it never activated again.

15 Correct?

16 A. That's correct.

17 Q. And could have been stuck is  
18 one possibility.

19 Correct?

20 A. That's right.

21 Q. Another possibility is that the  
22 pressure never got high enough again to  
23 activate the pressure relief valve.

24 Correct?

25 A. It is a possibility.

John Andrew McCarty

1 Q. Okay. And you didn't undertake  
2 any study to determine which of those  
3 scenarios was the actual case.

4 Correct?

5 MR. LEVINE: Objection.

6 THE WITNESS: We considered  
7 tactics to get in there and gathering  
8 data, which we were starting to try to  
9 do in those Saturday afternoon hours  
10 when the 30th car behaved the way it  
11 did and drove us out of the hot zone.

12 QUESTIONS BY MS. KARIS:

13 Q. Mr. McCarty, respectfully, is  
14 it correct that you did not undertake any  
15 study to determine which of the scenarios we  
16 talked about was what caused the PRV valve on  
17 GATX95098 to not activate again?

18 MR. LEVINE: Objection.

19 MR. HANSON: Objection.

20 THE WITNESS: I think I just  
21 answered that.

22 QUESTIONS BY MS. KARIS:

23 Q. Is that a yes or no?

24 You told me you went back into  
25 the other car. You saw how it behaved.

1 That's what caused you to move back.

2 But my question is, does that  
3 mean, therefore, you never did a study of  
4 GATX95098?

5 MR. HANSON: I apologize.

6 Objection.

7 THE WITNESS: Yeah, that's not  
8 how I responded.

9 So for clarity, when the PRDs  
10 had calmed down, and so did the fires,  
11 we initiated efforts on exactly what  
12 you're asking me. And before the  
13 entry team could get to the GATX car,  
14 the event that took place on the  
15 afternoon of Saturday with the 30th  
16 car occurred. And the moment that  
17 occurred, the efforts were suspended  
18 and never resumed.

19 QUESTIONS BY MS. KARIS:

20 Q. Okay. So from February 5th,  
21 when the event on the car that you were  
22 describing took place, through the time of  
23 the vent and burn, those efforts were never  
24 resumed to determine what was causing the PRV  
25 valve on GATX95098 to not activate.

1 Correct?

2 MS. HERLIHY: Objection. Form.

3 MR. HANSON: Objection.

4 THE WITNESS: Say, hearing you  
5 read that back to me, and I realize  
6 that's what I said, I want to qualify.

7 Norfolk Southern's request of  
8 us with the temperature reading  
9 attempts would have been a way to try  
10 to get that assessment. So I can't  
11 say that we didn't try.

12 You're asking me if we tried to  
13 do that. I can't say we didn't try.

14 QUESTIONS BY MS. KARIS:

15 Q. I don't know that I said "try,"  
16 and if I did --

17 A. If I misunderstood the  
18 question --

19 Q. Let me repeat the question.

20 You never did a study to  
21 determine what caused GATX95098 to not -- the  
22 pressure relief valve to not activate again  
23 on February 5th or February 6th before the  
24 vent and burn?

25 MR. HANSON: Objection.



1 THE WITNESS: Yeah, so you say  
2 study. I think assessment is -- can  
3 you help me understand if -- can you  
4 define the word "study" in your mind,  
5 what you --

6 QUESTIONS BY MS. KARIS:

7 Q. I'm going to move on in the  
8 interest of time.

9 A. Okay.

10 Q. Is it fair to say any work that  
11 you did, you would have reported that to  
12 incident command or somebody at Norfolk  
13 Southern?

14 A. Not incident command. Norfolk  
15 Southern.

16 Q. Okay. Would you agree with me  
17 that a decision to vent and burn a railcar is  
18 a significant decision that has serious  
19 consequences?

20 A. Serious decision, yes.

21 I can absolutely debate the  
22 comment you make on serious consequences. I  
23 think that's subjective.

24 Q. Okay. You knew when you were  
25 supporting the recommendation, if that's how

1       you want to call it, that you would be  
2       releasing hazardous substances into the  
3       environment as a result of the vent and burn.

4                       Correct?

5               A.       Yes, ma'am.

6               Q.       And you knew, therefore, it was  
7       important to get it right in terms of whether  
8       a vent and burn was necessary.

9                       Correct?

10                      MR. LEVINE:  Objection.

11                      THE WITNESS:  I think it was  
12       important to execute the vent and burn  
13       correctly.

14       QUESTIONS BY MS. KARIS:

15               Q.       It was equally important to  
16       make the right decision on whether to vent  
17       and burn.

18                      Correct?

19                      MR. LEVINE:  Objection.

20                      THE WITNESS:  That was the  
21       correct decision.

22       QUESTIONS BY MS. KARIS:

23               Q.       Mr. McCarty, respectfully,  
24       that's not my question.

25                      You knew that it was important

1 to make the right decision on whether to vent  
2 and burn.

3 A. Well, to clarify --

4 MR. LEVINE: Objection.

5 THE WITNESS: -- ma'am, with  
6 all due respect, that wasn't my  
7 decision.

8 QUESTIONS BY MS. KARIS:

9 Q. When you supported the  
10 decision -- is that an accurate way of  
11 putting it, first of all?

12 A. Yes.

13 Q. Okay. When you supported the  
14 decision to go forward with the vent and burn  
15 in a populated area, would you agree with me  
16 that it was important for that decision to be  
17 the correct decision?

18 MR. HANSON: Objection.

19 THE WITNESS: Yes.

20 QUESTIONS BY MS. KARIS:

21 Q. And if you did not think that  
22 polymerization was occurring, you would not  
23 have supported vent and burn.

24 Correct?

25 MR. LEVINE: Objection.

1 THE WITNESS: It's not  
2 necessarily the case. As I testified  
3 in June, that was just simply one  
4 variable in a complex recipe of risk  
5 assessment.

6 QUESTIONS BY MS. KARIS:

7 Q. Okay. And would you say that  
8 the risk of polymerization -- strike that.

9 The view that polymerization  
10 was occurring was a significant variable in  
11 what you described a complex recipe of risk  
12 assessment?

13 MR. HANSON: Objection.

14 THE WITNESS: And please  
15 forgive me for asking you to repeat  
16 this again, but it's an important  
17 question. I want to make sure I heard  
18 it good.

19 Can you -- do you mind  
20 repeating the question?

21 QUESTIONS BY MS. KARIS:

22 Q. Your belief that polymerization  
23 was occurring, was that a significant  
24 variable in what you described to be a  
25 complex recipe of risk assessment?

1 MR. LEVINE: Objection.

2 THE WITNESS: It was a  
3 variable.

4 QUESTIONS BY MS. KARIS:

5 Q. Okay. I didn't ask whether it  
6 was a variable. I asked if it was a  
7 significant variable.

8 Can you say one way or the  
9 other?

10 MR. LEVINE: Objection.

11 THE WITNESS: It was a  
12 significant variable.

13 QUESTIONS BY MS. KARIS:

14 Q. Would you agree that the  
15 decision to vent and burn is a choice of last  
16 resort?

17 A. Yes, ma'am.

18 Q. Do you know William Carol, a  
19 professor at Indiana, a former employee of  
20 Oxy Vinyls?

21 A. I do not know him personally.  
22 If it's who I think it is, I believe he was a  
23 gentleman they had testifying in East  
24 Palestine in June, I believe.

25 Q. Okay. Did you speak to him at

1 all at those hearings?

2 A. I don't think I did. If at  
3 all, it might have been a handshake in the  
4 parking lot with a cup of coffee on the way  
5 into the building, but I don't recall meeting  
6 him, no.

7 Q. Okay. Fair to say you don't  
8 know anything about his credentials or  
9 qualifications?

10 A. Only what was introduced at the  
11 hearings.

12 Q. Okay. Different subject. Last  
13 topic.

14 You told us earlier this  
15 morning, in fact I think you started there,  
16 saying that you've made 100 and -- your  
17 company has made 157 million from --

18 A. Not made, no, ma'am. That was  
19 gross sales.

20 Q. Billed. Gross sales.

21 A. Yes, ma'am.

22 Q. Okay. And I think you said  
23 earlier you're not sure quite what your  
24 billing rate is.

25 Correct?

1           A.       I don't remember. No.

2           Q.       But you are billing at your  
3 hourly rate to sit and testify these past two  
4 days.

5                   Correct?

6           A.       Yes, ma'am.

7           Q.       And every time that you've  
8 testified regarding this incident, you are  
9 being paid for it.

10                   Correct?

11          A.       Yes, ma'am.

12          Q.       And every hour that you've  
13 spent getting ready to testify, you've billed  
14 for that, too.

15                   Correct?

16          A.       Yes, ma'am.

17                   MS. KARIS: I have no further  
18 questions at this time. Thank you.

19                   And I'm going to pass.

20                   VIDEOGRAPHER: We are off the  
21 record at 11:53.

22                   (Off the record at 11:53 a.m.)

23                   VIDEOGRAPHER: We are now back  
24 on the record at 12:07.

25                   REDIRECT EXAMINATION

1 QUESTIONS BY MR. GOMEZ:

2 Q. Mr. McCarty, thanks for  
3 speaking with me again. I have a few  
4 follow-up questions based off of some of the  
5 questions that were asked by the other  
6 attorneys.

7 You just had a fairly detailed  
8 discussion with Ms. Karis about pressure  
9 relief devices and nitrogen be expelled.

10 Fair to say you remember that,  
11 right?

12 A. Yes.

13 Q. And if I heard you correctly,  
14 one of the concerns with nitrogen being  
15 expelled in that process is that as the  
16 pressure relief devices close, there can be  
17 some oxygen infiltration in that interface  
18 area.

19 Is that correct?

20 A. Yes.

21 Q. Do you have any training,  
22 knowledge or experience indicating how much  
23 oxygen infiltrates when the pressure relief  
24 device closes?

25 A. No.



1           Q.       Did you receive any information  
2       to that effect between February 3rd and  
3       February 6th in connection with the VCM PRDs  
4       activating in East Palestine?

5           A.       No.

6           Q.       Do you have any training,  
7       knowledge or experience regarding the amount  
8       of oxygen that would have to be introduced to  
9       a VCM railcar in order to effect  
10      polymerization of that chemical?

11          A.       Not specifically, no.

12          Q.       And fair to say that you also  
13      did not receive any information to that  
14      effect between February 3rd and February 6th  
15      in connection with the PRDs activating in  
16      East Palestine?

17          A.       I'm sorry. Repeat the  
18      question. I don't mean to ask you to repeat,  
19      but --

20          Q.       No problem.

21          A.       I want to keep up. I just want  
22      to make sure I'm catching it.

23          Q.       Yeah. So I'll just rephrase it  
24      to make sure we're on the same page.

25                   Did you receive any information

1 indicating how much oxygen infiltrates that  
2 interface of the PRD between February 3rd and  
3 February 6th while responding to the East  
4 Palestine derailment?

5 A. No.

6 Q. Do you have any knowledge,  
7 training or experience regarding the rate at  
8 which oxygen has to be introduced to VCM in  
9 order to effect a polymerization reaction?

10 MS. HERLIHY: Object to the  
11 form.

12 THE WITNESS: Not in specific  
13 concentrations, no.

14 QUESTIONS BY MR. GOMEZ:

15 Q. Fair to say you did not receive  
16 any information between February 3rd and  
17 February 6th regarding the rate at which  
18 oxygen would need to be introduced to VCM to  
19 effect polymerization, if at all?

20 A. That's a correct statement.

21 Q. If you felt that you needed  
22 information along the lines of oxygen  
23 infiltration rates, the amount of oxygen  
24 that's needed to impact the polymerization of  
25 VCM, if at all, while in the field for any

1 given HAZMAT incident, how would you go about  
2 getting that information?

3 MR. LEVINE: Objection.

4 THE WITNESS: That's the kind  
5 of stuff that the producers can offer.

6 QUESTIONS BY MR. GOMEZ:

7 Q. "The producers" meaning the  
8 product manufacturer?

9 A. Yes.

10 Q. Is that fair?

11 So if we take that and apply it  
12 to East Palestine, it would have been Oxy  
13 that would have been able to provide that  
14 information.

15 Right?

16 MR. LEVINE: Objection.

17 THE WITNESS: I would hope so,  
18 yes.

19 QUESTIONS BY MR. GOMEZ:

20 Q. At any point in time, did you  
21 request that type of information from Oxy in  
22 connection with the East Palestine  
23 derailment?

24 A. No.

25 Q. Did you believe information

1       regarding the oxygen infiltration rate and  
2       the amount of oxygen that might infiltrate  
3       via a PRD closing was relevant to the  
4       question of whether polymerization was  
5       occurring in the VCM railcars between  
6       February 3rd and February 6th?

7             A.       I'm going to apologize again.  
8       That was a long question. And I'm sorry.  
9       Just kind of segment that out for me, again,  
10      please.

11            Q.       Sure. I'm going to read it  
12      back and then break it up if we need to.

13                    Okay?

14            A.       Okay.

15            Q.       Did you believe that -- did you  
16      believe that information regarding oxygen  
17      infiltration rate via a PRD was relevant to  
18      the question of whether polymerization was  
19      occurring in the VCM railcars between  
20      February 3rd and February 6th?

21            A.       I'm going to be very careful  
22      how I answer.

23                    I didn't think that the -- the  
24      explicit details of those scientific  
25      calculations would have been necessary given

1 the environmental conditions that we were all  
2 faced with in East Palestine.

3 Q. And what specific environmental  
4 conditions are you referring to in that  
5 response?

6 A. The tremendous pool fires,  
7 sustained pool fires. And I guess to take  
8 the answer to -- the conclusion of the answer  
9 is, in a hypothetical, even if I would have  
10 asked for that data, we had no way to measure  
11 it. So it was -- there would have been no  
12 way to measure that.

13 Q. So because ultimately there  
14 wouldn't have been a way to quantify that in  
15 the field, the relevance of that information  
16 wasn't as strong.

17 Is that a fair  
18 characterization?

19 MR. LEVINE: Objection.

20 THE WITNESS: Right. Whether  
21 someone said it on the phone or we  
22 found it in a stack of data, there  
23 would have been no way to quantify it.

24 QUESTIONS BY MR. GOMEZ:

25 Q. But the concept that oxygen

1       could be infiltrating the VCM cars as the  
2       PRDs were activating was something you were  
3       mindful of when considering whether the cars  
4       were actually undergoing polymerization.

5                       Is that fair?

6               A.       That was another long question.

7                       If you're asking me about that  
8       interface that I described in the last lady  
9       that was inquiring --

10              Q.       Ms. Karis?

11              A.       Is that what you're asking?

12              Q.       Let me read it back, and if we  
13       have to break it up, we'll break it up.

14                      But is it fair that the concept  
15       that oxygen could be infiltrating the VCM  
16       cars as the PRDs were activating was  
17       something you were mindful of when  
18       considering whether the cars were actually  
19       undergoing polymerization?

20                      MR. LEVINE:  Objection.

21                      THE WITNESS:  It's the latter  
22       part of, I guess, the concept at the  
23       front of your question, and you're  
24       saying the act of polymerization at  
25       the end of your question that's

1           confusing my mind right now and how  
2           the question is being -- I guess I'm  
3           not sure -- I hate to ask you to do it  
4           one more time. Yeah, I'm sorry. It  
5           just seems to be -- not finding --  
6           following the question.

7       QUESTIONS BY MR. GOMEZ:

8           Q.       Let me try and break it up and  
9           see if we can get on the same page.

10                   Fair to say that one of the  
11           challenges of the East Palestine derailment  
12           was determining whether there was a  
13           possibility of polymerization in the VCM  
14           cars.

15                   Right?

16           A.       Yes, that was certainly a risk.

17           Q.       And there were several factors  
18           or conditions that you were considering when  
19           trying to assess the risk for polymerization  
20           in the VCM cars.

21                   Right?

22           A.       Yes.

23           Q.       Was the concept that oxygen can  
24           infiltrate the VCM cars via the PRD, as  
25           you've described, one of those variables or

1 conditions you were mindful of when assessing  
2 the risk for polymerization?

3 A. To clarify, at the interface,  
4 that's where I think the previous questioning  
5 and testimony was -- I appreciated it to  
6 clarify the phenomenon. It was really at the  
7 interface during those cyclings and in the  
8 process of the actual burning at those  
9 interfaces.

10 The process of fire is a  
11 process of free radical behavior that all --  
12 you need oxygen for fire. So it was  
13 inherently present all around those  
14 interfaces.

15 So I know it's a long way to  
16 answer your question, but that's what I'm on  
17 the record.

18 Q. Okay. So the presence or  
19 existence of oxygen at that interface, as  
20 you've called it, was a factor that you were  
21 mindful of in assessing the condition of the  
22 railcars.

23 Right?

24 A. Yes.

25 Q. And the condition of the



1 railcars, including the possibility for  
2 polymerization.

3 Right?

4 A. Yes.

5 Q. I want to bring back up Exhibit  
6 Number 11, which should be in your stack,  
7 hopefully.

8 MR. HANSON: Mr. Gomez, can you  
9 just tell him which one it is? Like  
10 what the content is?

11 MR. GOMEZ: Sure. It's the  
12 February 5, 2023 afternoon entry  
13 findings that were discussed a little  
14 bit earlier with Ms. Herlihy.

15 THE WITNESS: I'm looking. I  
16 know it's in here somewhere. Sorry.

17 It's got to be here, right?  
18 I'd say it's 11. This is 18.

19 MR. LEVINE: It --

20 MR. GOMEZ: It may have been  
21 marked -- yeah. We can refer to 18,  
22 Mr. McCarty.

23 THE WITNESS: I have it.

24 MR. GOMEZ: It's not a problem.

25

1 QUESTIONS BY MR. GOMEZ:

2 Q. At least if we're referring to  
3 it as 18, it's my understanding that the  
4 2/5/23 afternoon entry findings is the latter  
5 part of that document.

6 Is that correct?

7 A. When you say the latter part of  
8 the afternoon, I'm looking towards the bottom  
9 where it says OCPX080370 at like 16:30 hours.

10 Q. Sorry, I may have misspoken. I  
11 just want to orient you in terms of the  
12 exhibit.

13 The afternoon entry findings  
14 are the latter pages of the exhibit, not  
15 latter afternoon.

16 A. I'm sorry.

17 Q. That's fine. It's been a long  
18 couple of days. I want to make sure we're  
19 talking about the same document.

20 A. Okay.

21 MR. LEVINE: Adam, can I ask  
22 for clarity? Which exhibit are you  
23 looking at now? What is the sticker?

24 MR. GOMEZ: It's 18.

25 MR. LEVINE: Got it. Okay.

1 MR. GOMEZ: And I'm referring  
2 to the portion of 18 that was also  
3 marked as 11.

4 And just for everyone's  
5 edification, the Bates numbers are  
6 SPSI 001747 to 1748.

7 MR. LEVINE: Just trying to  
8 keep it clear.

9 MR. GOMEZ: No, I get it.

10 QUESTIONS BY MR. GOMEZ:

11 Q. Now, you, if I recall correctly  
12 from Ms. Herlihy's questions, one of your  
13 undertakings last night was to speak with  
14 several supervisors regarding the contents of  
15 this document.

16 Is that fair?

17 A. A couple key points that were  
18 surprising to me yesterday, yes.

19 Q. Okay. And you spoke to  
20 supervisors regarding those key points that  
21 stood out to you yesterday when you and I  
22 were discussing the document.

23 Fair?

24 A. Fair.

25 Q. I want to make sure I have the

1 folks that you spoke with correctly, and if I  
2 mispronounce anyone's names, my apologies.

3 The first person you noted was  
4 D'Shawn Herrera?

5 A. Yes.

6 Q. You also noted Blaise  
7 MacDonald?

8 A. Yes.

9 Q. You noted Connor Fritz?

10 A. Yes.

11 Q. Greg Palmer as well?

12 A. Greg Palmer.

13 But to clarify, he never took  
14 any readings. He was relaying information  
15 from the guys in the field to Jon Simpson.  
16 So he wouldn't have been the one with the  
17 thermometer, but he was the night shift  
18 safety guy.

19 Q. Understood.

20 And just for purposes of my  
21 questioning, he's someone you spoke to last  
22 night regarding the document we have in front  
23 of you?

24 A. Yes, sir.

25 Q. Alex Klepsic?

1 A. Yes.

2 Q. That's another one.

3 Right?

4 A. Yes.

5 Q. You also spoke with Charles  
6 Filby?

7 A. Yes. Actually just this  
8 morning. Charles was already sleeping when I  
9 tried him last night.

10 Q. Okay. You also spoke with  
11 Max -- and I don't want to pronounce his last  
12 name.

13 A. I'm with you there.

14 Kalchthaler is the best I got.

15 Q. Okay. And the last person that  
16 I noted was Mike Burket.

17 Is that correct?

18 A. Yes.

19 And Mike Burket, for the record  
20 never did any readings himself. He authored  
21 this summary on my request. And that's how  
22 Michael Burket -- and that's why I called  
23 him.

24 And I called Mike Kline last  
25 night, too, because Mike was kind of my lead

1     guy, has been my lead guy, there since I  
2     transitioned off the site.

3                     So -- and Mike was, you know,  
4     part of this relay of information as well,  
5     but never did any of the readings himself.

6             Q.       Other than the list that we  
7     just went through and the addition of Mike  
8     Kline, was there anyone else that you spoke  
9     to last night or this morning regarding the  
10    portion of Exhibit 18 that we're discussing  
11    now?

12            A.       No.

13            Q.       Okay. If that's the case, you  
14    did not speak to Ryan Tokarski regarding  
15    this --

16            A.       Oh, I'm sorry. I'm sorry.  
17    Ryan and Cody Tokarski should be names on  
18    this list. Thank you. Thank you for that  
19    question. I don't mean to omit them.

20                     So the earlier -- please  
21    reflect the earlier -- I accidentally  
22    omitted, yes, Ryan Tokarski and his brother  
23    Cody were also both guys -- Ryan was the  
24    first one to take the readings. D'Shawn was  
25    the second crew.

1 Thank you for the question.

2 Q. Okay. So Ryan Tokarski is an  
3 additional person, and then his brother is --

4 A. His brother Cody.

5 Q. Cody?

6 A. Yes.

7 Q. Also last name Tokarski?

8 A. Yes.

9 Q. We discussed briefly, if you  
10 recall, Ryan Tokarski yesterday.

11 Right?

12 A. Yes.

13 Q. Ryan Tokarski is one of your  
14 senior operations managers.

15 Is that right?

16 A. Senior field guy. He's --  
17 we've -- he's actually now my number one  
18 program service manager since then. But he's  
19 one of my most senior guys that's been with  
20 me a long time.

21 Q. At the time of the derailment,  
22 February 3, 2023, was Mr. Ryan Tokarski still  
23 one of your senior guys?

24 A. Yes.

25 Q. And Mr. Tokarski -- when I

1       refer to Mr. Tokarski, it's going to be Ryan,  
2       not Cody.

3               A.       Yes.

4               Q.       Mr. Tokarski was one of the  
5       SPSI personnel who first responded to the  
6       derailment alongside you.

7                       Right?

8               A.       Yes.

9               Q.       I think he may have actually  
10      beat you there.

11                      Is that correct?

12              A.       He was there slightly before  
13      me, yes.

14              Q.       And yesterday we discussed a  
15      statement that Mr. Tokarski made in an  
16      interview to the NTSB.

17                      Do you recall that  
18      conversation?

19              A.       I do.

20              Q.       And correct me if I'm wrong, it  
21      was actually your suggestion that the NTSB  
22      speak to Mr. Tokarski.

23                      Right?

24              A.       Yes.

25              Q.       And we discussed Mr. Tokarski's



1 statements regarding the accuracy or the  
2 reliability of the tank measurements.

3 Do you remember that?

4 A. I remember that.

5 Q. Did you ask Mr. Tokarski  
6 specifically about anything he recalled in  
7 connection with those statements when you  
8 spoke with him last night?

9 A. No, I just kind of narrowed my  
10 questions to this document.

11 Q. This document deals with  
12 temperatures of the various VCM cars, amongst  
13 other things.

14 Right?

15 A. Yes.

16 Q. And the reason you reached out  
17 to folks last night and this morning was to,  
18 in part, refresh your recollection as to  
19 whether these were, in fact, accurate or  
20 reliable temperature measurements.

21 Right?

22 A. Yes.

23 Q. If we spoke yesterday about  
24 statements Mr. Tokarski made regarding the  
25 reliability and the accuracy of the

1 temperature measurements to the NTSB, and you  
2 had the opportunity to speak with him about  
3 that subject in connection with this  
4 document, is there any reason why you didn't  
5 bring up his interview with the NTSB as part  
6 of that conversation?

7 A. No.

8 Q. So as you sit here today, you  
9 don't have any more or less understanding of  
10 what exactly he did say to the NTSB.

11 Right?

12 A. No, I've never read his  
13 testimony.

14 Q. And you've never asked him  
15 whether, in fact, he said the measurements  
16 that were taken of the VCM cars, temperature  
17 measurements, were reliable and accurate.

18 Right?

19 A. No, he and I have not talked  
20 about that.

21 I'm sorry. Your question. Are  
22 you asking me about his testimony, or are you  
23 asking me if he and I ever talked about his  
24 accuracy of temperatures? Because, yes, we  
25 did in the field.

1 Q. In connection --

2 A. So I want to make sure --

3 Q. Sure.

4 A. -- I just didn't accidentally  
5 speak.

6 Q. Nope. And I want to make sure  
7 we have a clear record.

8 So my question is limited to  
9 whether you've discussed with him any  
10 statements he may have made to the NTSB in  
11 his interview regarding the accuracy and  
12 reliability of the temperature readings.

13 A. No, I've not talked to him  
14 about his testimony.

15 Q. I think you mentioned -- or you  
16 added Mike Kline as an individual --

17 A. Yes.

18 Q. -- on the list of folks that  
19 you spoke to.

20 And Mike Kline wasn't taking  
21 temperature measurements himself, but he was,  
22 correct me if I'm wrong, involved in the  
23 process of relaying them?

24 A. Yes. And that's kind of what I  
25 got out of him last night is, hey, did you

1       ever have a thermometer, and were you ever  
2       one of the ones crawling around the cars  
3       looking for temperatures. And he said no.

4                       But I was kind of relaying some  
5       of the data to Jon Simpson and such for  
6       Norfolk Southern.

7               Q.       And it's your understanding  
8       that the portion of Exhibit 18 that we're  
9       looking at now, Bates numbers 1747 and 1748,  
10      that was prepared by not Mike Kline but Mike  
11      Burket.

12              A.       Yes.

13              Q.       Right?

14                       And that it was prepared by  
15      Mike Burket at your request?

16              A.       That's what Mike reminded me of  
17      last night, because yesterday I didn't recall  
18      it. I didn't remember asking him for it. I  
19      didn't remember the context of why it was  
20      sent the day of my NTSB interview.

21                       And I just put it out there  
22      to -- I had Mike Kline and Mike Burket on the  
23      speakerphone because they were both kind of  
24      helpers for me at the site. I said, can you  
25      guys remember, like, did Norfolk Southern ask

1       us for this? Did I ask you to prepare it  
2       or --

3                       And he said, well, Drew, you  
4       did. He said, you -- you know.

5                       And I said, do you remember why  
6       I asked you?

7                       And he basically said, yeah,  
8       you were hoping that I could give you a  
9       summary of stuff you had asked me to just --  
10      whatever notes, can you put them together for  
11      me as a -- he tried to do this to help me, as  
12      a cheat sheet for me before my NTSB  
13      interview. I had never been to an NTSB  
14      interview before. I didn't really know what  
15      to expect.

16                      And in the final analysis, I  
17      really didn't have this data prior to that  
18      interview anyway.

19              Q.       You mentioned a side-by-side  
20      discussion, I think that's what you said,  
21      between Mike -- with yourself, Mike Burket  
22      and Mike Kline.

23                      Is that a discussion that took  
24      place within the last 24 hours?

25              A.       Just last evening, yes.

1 Q. Okay. And that's where you  
2 asked for them to help you remember how this  
3 document came about.

4 A. Yes.

5 Q. Fair?

6 A. Correct.

7 Q. And I want to make sure again  
8 that I understand it correctly.

9 It was in the course of that  
10 conversation last night that you were  
11 reminded you had made the request for this  
12 document to be prepared in anticipation of  
13 giving a statement to the NTSB.

14 Right?

15 A. Correct. That's what Mike  
16 Burket shared with me. I take his word for  
17 it. I believe him.

18 (McCarty Exhibit 24 marked for  
19 identification.)

20 QUESTIONS BY MR. GOMEZ:

21 Q. Let's pull up Document 177,  
22 which we will mark as Exhibit 24.

23 Mr. McCarty, Exhibit 24, I will  
24 represent to you, is a printout of the  
25 metadata associated with the portion of

1 Exhibit 18 that we've been discussing,  
2 specifically Bates numbers SPSI 001747 to  
3 SPSI 001748.

4 My question to you is, are you  
5 familiar with the concept of metadata?

6 A. Not really.

7 Q. Okay. I'm not terribly  
8 familiar with it either, except to say that  
9 I'll represent to you that it's data about a  
10 file. It provides core data about the nature  
11 of a file.

12 A. Okay.

13 Q. Okay?

14 And I will also represent to  
15 you that this is the core data about the  
16 nature of the file we've been discussing that  
17 was produced by SPSI.

18 A. Okay.

19 Q. You with me?

20 A. Okay.

21 Q. Okay. And you can see that at  
22 the top of Exhibit 24, there's a reference to  
23 the document begin number and end numbers.

24 Do you see that?

25 A. Okay, yes.

1 Q. And it's 1747 to 1748.

2 Right?

3 A. Okay.

4 Q. And that corresponds with the  
5 numbers that are in the portion of Exhibit 18  
6 that we've been discussing, also 1747 and  
7 1748.

8 Right?

9 A. Okay. I think I'm following.

10 Q. If we look at the information  
11 provided with the document that we've just  
12 been discussing, the metadata that was  
13 provided with the document we've just been  
14 discussing, you'll see that there's a number  
15 of fields, a lot of which are blank. But I  
16 want to direct your attention to -- towards  
17 the middle of the page, there's a -- there's  
18 a field for author.

19 Do you see that?

20 A. Yes.

21 Q. And it notes that Michael Kline  
22 is the author of the document we've been  
23 discussing.

24 Do you see that?

25 A. Okay. Yeah.



1           Q.       Fair to say Michael Kline  
2       didn't recall in the conversation you had  
3       last night being the author of the document  
4       we've been discussing?

5           A.       That's a fair assessment, yeah.  
6       I didn't get that from the conversation last  
7       night.

8           Q.       And if we look up a few lines,  
9       there's another field that says "OS creation  
10      date/time."

11                   Do you see that?

12          A.       I do.

13          Q.       And it notes that the  
14      document's creation date and time was  
15      actually February 9, 2023, at 14:35.

16                   Do you see that?

17          A.       I do.

18          Q.       Based off of the data that has  
19      been provided with the document we've been  
20      discussing, again, those two Bates numbers  
21      from Exhibit 18, do you think it's possible  
22      that that document was created well in  
23      advance of your NTSB hearing on February 9,  
24      2023? Or NTSB interview, I'm sorry.

25                   MR. LEVINE: Objection.

1 THE WITNESS: I'll say, can you  
2 repeat the exact wording of your  
3 question?

4 QUESTIONS BY MR. GOMEZ:

5 Q. Sure.

6 Based off of the data provided  
7 along with the document that was produced as  
8 part of Exhibit 18 that we've been  
9 discussing --

10 A. Uh-huh.

11 Q. -- do you believe it is  
12 possible that instead of being prepared for  
13 purposes of your NTSB interview, this  
14 document was actually created on February 9,  
15 2023?

16 MR. HANSON: Objection.

17 THE WITNESS: Based on this  
18 data, I have to acknowledge it looks  
19 like it is possible.

20 QUESTIONS BY MR. GOMEZ:

21 Q. And if it had been created on  
22 February 9, 2023, that would have been three  
23 to four days after the vent and burn.

24 Right?

25 A. Yes, three days or so, it looks

1       like.   Yes.

2               Q.       It would have been roughly four  
3       days after the temperature readings we were  
4       discussing in the document were taken.

5                       Correct?

6               A.       Correct.

7               Q.       And based off of your  
8       understanding from the discussion last night  
9       with both Michael Kline and Michael Burket,  
10      it would have been based on notes and other  
11      observations taken during the period of  
12      February 5th into February 6th.

13                      Right?

14              A.       I believe that to be accurate,  
15      yes.

16              Q.       Okay.  We can put that aside,  
17      sir.  Thank you.

18                      We don't need to refer to the  
19      document, per se, but I think I know the  
20      answer.

21                      If Mike -- Michael Kline didn't  
22      mention being the author potentially of the  
23      document that we have been discussing, fair  
24      to say he didn't give any insights last night  
25      about how it was created?

1           A.       That's a fair assessment.

2           Q.       But if Michael Burket  
3       remembered receiving a request from you in  
4       advance of your NTSB interview to prepare --  
5       I think you called it maybe a cheat sheet at  
6       one point for the interview?

7           A.       Yeah, just all the notes that  
8       they had been assembling. And I mean "they"  
9       meaning my crews. And those two guys were my  
10      kind of lead guys for administrative support,  
11      and that's why I called them both last night.

12          Q.       Uh-huh.

13          A.       You know, I can kind of --  
14      based on this metadata, whatever you call --  
15      metadata? Is that the word?

16          Q.       That's what it's called.

17          A.       It's -- I can acknowledge  
18      metadata suggests that a Mike Kline initiated  
19      a Word document on the 9th at 14:35 hours.  
20      And possibly some of that information had  
21      already been initiated, perhaps at Norfolk  
22      Southern's request, when I made the request  
23      to Mike Burket. They work together. Hey,  
24      I've already got this started.

25                   I can kind of see how that

1       could have happened.

2               Q.       Okay. So if we go one step  
3 further from your answer, it's possible some  
4 of the information, at least in the document  
5 we've been discussing, was available to you  
6 before the NTSB interview.

7                       Right?

8               MR. LEVINE: Objection.

9               THE WITNESS: It's possible,  
10              yes.

11      QUESTIONS BY MR. GOMEZ:

12              Q.       I'm going to switch gears now.

13                      You discussed with other  
14 counsel a meeting at one of the schools which  
15 included, among other folks, Governor DeWine.

16                      Do you remember that  
17 discussion?

18              A.       Quite well.

19              Q.       I think you've called it a --  
20 in the past, a political -- a political  
21 hornet's nest.

22                      You remember that?

23              A.       That's how I'll probably --  
24 I'll never forgot that moment in my entire  
25 life. Yes, sir, it's a good description.

1 Q. And I know that there was a lot  
2 of people there, and it's hard to recall  
3 exactly who was there from what agency.

4 But can we agree that Governor  
5 DeWine was there?

6 Right?

7 A. Governor DeWine was there.

8 Q. Chief Drabick was there?

9 A. I think so, but to be honest  
10 with you, when we walked in the room, the  
11 governor jumped us pretty quick. My eyes  
12 never really panned the room, to be honest  
13 with you.

14 Q. Fair enough.

15 I think you said earlier that  
16 at one point you saw the governor have a  
17 conversation with Chief Drabick, and then you  
18 got the authority to go ahead with the vent  
19 and burn.

20 Do you recall that?

21 A. That was after that  
22 intervention meeting. That was an  
23 encounter -- I should say not an  
24 intervention -- encounter that was -- the  
25 initial encounter with the governor was in a

1 room with a whole lot of people. It was  
2 after air modeling considerations had been  
3 reevaluated.

4 And when the governor walked  
5 into another room that I just happened to be  
6 in and -- his comment to that room was, well,  
7 I guess we got all this fancy stuff that  
8 nobody knows how to operate, so I guess I've  
9 got a press conference in eight minutes, or  
10 whatever it was, is kind of how his -- and  
11 that's when I interjected. I said, Governor,  
12 all due respect, I said, if we need -- we  
13 need to do this in the daylight. If you've  
14 got to go to a press conference, we need at  
15 least three hours. We need to, you know, get  
16 somebody to green light this for sure,  
17 because I thought it was -- again, in my  
18 mind, it had been green lighted the day  
19 before.

20 So that's -- I know it's a long  
21 question -- it's a long answer, but that's  
22 the truth.

23 Q. No, I appreciate the  
24 clarification. And I want to focus on what I  
25 would call the second interaction there --

1           A.       Okay.

2           Q.       -- where you raise your hand to  
3       say something to the governor.

4                    At that point in time he was  
5       with Chief Drabick.

6                    Correct?

7           A.       I actually remember him having  
8       to find Chief Drabick. I believe he exited  
9       the room, found Chief Drabick, and then came  
10      back with the, this is authorized. Go. Why  
11      aren't you done yet kind of tone.

12          Q.       Okay. So you saw them at some  
13      point both together when they authorized the  
14      vent and burn?

15          A.       I remember the governor leave  
16      the room to go find the chief, and I'm pretty  
17      cloudy right now as to if the chief walked  
18      back into the same room I was in or not. But  
19      the governor did.

20                    So I -- that's -- I can't  
21      remember if the chief and the governor were  
22      standing side-by-side or not. Perhaps  
23      someone else might, but I can't remember.

24          Q.       Focusing on that second  
25      interaction again, do you recall specifically



1 anyone else who was in the room from any  
2 particular agency, organization, anything of  
3 the like?

4 A. I'm sorry, I can't even  
5 remember what room I was in. I apologize. I  
6 don't remember what room I was in.

7 Q. But at a minimum, we have at  
8 one -- at one point in time, Governor DeWine  
9 and Chief Drabick.

10 Right?

11 A. Again, I can't -- I can't  
12 verify that Chief Drabick was in the first  
13 room. And I also cannot vividly remember  
14 when the governor turned around to go find  
15 Chief Drabick, if Chief Drabick followed his  
16 shirttails in. I just don't remember.

17 Q. Let's start with Chief Drabick.

18 At any point between  
19 February 3rd and February 6th -- actually,  
20 let me withdraw that and confirm something.

21 Yesterday when you and I spoke,  
22 I think we generally discussed the flow of  
23 information as being SPSI and SRS to Norfolk  
24 Southern, Norfolk Southern then to unified or  
25 incident command.

1 Right?

2 A. Yes.

3 Q. It's the general flow of  
4 information.

5 Correct?

6 A. Yes.

7 Q. And then to the extent  
8 information needed to go from incident or  
9 unified command back to SPSI or SRS, that  
10 would likewise flow through Norfolk Southern.

11 Right?

12 A. It would have flowed through  
13 Norfolk Southern, yes.

14 Q. Again, that's a general  
15 description of the way the communications  
16 worked.

17 Fair?

18 A. Fair.

19 Q. At any point in time between  
20 February 3rd and February 6th, specifically  
21 the vent and burn on February 6th, did you  
22 have direct communication with Chief Drabick?

23 A. Not that I can recall without  
24 the presence of Norfolk Southern.

25 Q. At any point in time between

1 February 3rd and February 6th, other than the  
2 interaction that you just described, did you  
3 have any direct contact with Governor DeWine?

4 A. No.

5 Q. I don't want to make you rehash  
6 the -- whether Chief Drabick was in another  
7 room or came back with the governor, but do  
8 you recall during that general interaction  
9 having any conversation with Chief Drabick?

10 A. Not directly, no.

11 Q. When you spoke with Governor  
12 DeWine after lunch on February 6th, that  
13 second interaction, I believe? I don't want  
14 to get it wrong.

15 A. No, I think that's the right  
16 date, yeah.

17 Q. Okay. Did you discuss with him  
18 specifically your opinions about whether  
19 polymerization was occurring in the VCM cars?

20 A. No.

21 Q. During that same interaction  
22 with Governor DeWine, did you identify for  
23 him or tell him that Occidental Chemical, Oxy  
24 Vinyls, had concluded polymerization was not  
25 occurring in the VCM cars?

1           A.       No.

2           Q.       In that same interaction with  
3   Governor DeWine, did you have a discussion  
4   about the inherent risks of a vent and burn  
5   operation?

6                   MR. LEVINE:  Objection.

7                   THE WITNESS:  I'm trying to  
8   recall.

9                   The first encounter with the  
10   governor, the spirit of that and the  
11   reason they invited us in was to  
12   answer governor's questions.  And he  
13   had -- and he interrupted us.  He  
14   pretty much didn't let us get through  
15   our presentation.  He pretty much  
16   jumped our ass.

17   QUESTIONS BY MR. GOMEZ:

18           Q.       And that was specific to an air  
19   modeling plume.

20                   Right?

21           A.       Yes.

22           Q.       So I want to take the plume  
23   aside.  I know you discussed the plume with  
24   Governor DeWine.  And I want to focus on  
25   other specific discussions that may or may

1 not have occurred.

2 A. Yeah.

3 Q. At any point on February 6th in  
4 your interactions with Governor DeWine, did  
5 you discuss other inherent risks in a vent  
6 and burn operation?

7 A. Someone -- and I don't remember  
8 if the governor asked or if someone else in  
9 the room asked about how ignition could be  
10 guaranteed. Like how can there be an  
11 assurance that once ESI, you know, does their  
12 shape charges or does their blast charges,  
13 excuse me, they're hole-cutting charges --  
14 I'm using that as a generic. I'm not an  
15 explosives expert. That's ESI -- how did the  
16 planning process assure ignition.

17 And we deferred to Jason Poe on  
18 that answer.

19 And I can tell you in my own  
20 35-year career, I felt very assured that  
21 those redundancies were in place for  
22 everyone's collective safety.

23 Now, that was a momentary  
24 discussion by someone asking that question.  
25 I don't remember who asked it.

1 I do remember the governor  
2 looking right at me in that second  
3 encounter -- and I appreciate this got my  
4 memory going -- he asked me to -- and he --  
5 something like, can you give me -- can you  
6 give me in 60 seconds or less how this works,  
7 you know, kind of that kind of presentation  
8 question from the governor.

9 And I can vividly remember my  
10 response to him, and it went like this.

11 I said, well, Governor, the  
12 first shape charge lets the vapor pressure  
13 out of the car. There's a -- there's an  
14 explosive charge that releases vapor pressure  
15 from in the car. It's a vertical charge.

16 And I actually went {witness  
17 makes audible sound}, and then, boom, hit the  
18 second charge, which is the liquid release  
19 into the control burn pit.

20 And he genuinely appreciated  
21 that. I could see his light bulb come on of,  
22 now I understand. And that was -- I remember  
23 that vivid interaction with the governor.

24 Q. And in the course of giving  
25 that 60-second explanation or at any time --

1 any other time, for that matter, did you  
2 discuss with Governor DeWine the potential  
3 that in the course of doing the vent and burn  
4 operation there could be a catastrophic tank  
5 failure?

6 A. I don't remember if that  
7 question ever came up or if I ever thought to  
8 talk about it. So I'm going to say I don't  
9 have any memory of that conversation.

10 Q. Do you recall discussing with  
11 anyone at Norfolk Southern the risk for a  
12 catastrophic tank failure in the course of  
13 conducting a vent and burn operation?

14 A. The Norfolk Southern HAZMAT  
15 staff all received the same training I did.

16 Q. So you assumed --

17 A. There was no discussion of that  
18 particular topic.

19 Q. Okay. So if your reference  
20 to -- I want to make sure I understand your  
21 reference to receiving the same training that  
22 you did.

23 Is it your understanding that  
24 while you may not have had a specific  
25 discussion with the Norfolk Southern HAZMAT

1 folks regarding the potential for a  
2 catastrophic tank failure in the vent and  
3 burn operation, because they received the  
4 same training, you assumed they were aware of  
5 that potential?

6 A. It's a very remote potential.

7 Q. Remote or not, it is a  
8 possibility.

9 Correct?

10 A. Anything in mechanical stuff is  
11 possible.

12 Q. It's, in fact -- it's a  
13 possibility that's specifically discussed by  
14 the FRA in its vent and burn manual.

15 Right?

16 A. Probably, yes.

17 Q. It's a possibility that is  
18 specifically discussed in training put on by  
19 SERTC.

20 Right?

21 A. Yes.

22 Q. Do you know, as you sit here  
23 today, whether at any point in time personnel  
24 from Norfolk Southern communicated to  
25 incident or unified command the potential for



1 a catastrophic tank failure in the course of  
2 conducting a vent and burn operation?

3 A. I am not aware of any  
4 communications of that -- of that topic. I'm  
5 not aware of any.

6 Q. And is it fair to say no one  
7 from SPSI directly communicated to anyone on  
8 incident or unified command the potential for  
9 a catastrophic tank failure in the course of  
10 conducting a vent and burn operation?

11 A. That's accurate.

12 Q. Same line of questions, but a  
13 different concept.

14 In the interaction that you  
15 had -- interactions that you had with  
16 Governor DeWine on February 6th, did you  
17 discuss with him the potential for a vapor  
18 cloud explosion in the course of conducting a  
19 vent and burn operation or project?

20 A. When you describe a vapor cloud  
21 explosion, there was no such conversation.

22 Q. There was no such conversation  
23 with Governor DeWine or at all?

24 A. I'd never heard that term until  
25 you just said it. So when you say "vapor

1 cloud explosion," that would imply unignited  
2 vapors -- okay. Hold on. Not  
3 ignited vapors.

4 Someone asked the -- that was  
5 back -- that was the same question that I  
6 already responded to but in a different way.

7 Someone had asked, how can you  
8 guarantee ignition. Once these holes get  
9 punched in the cars, how can we all guarantee  
10 ignition. And that's where the redundancies  
11 were engineered into it.

12 So that's where that dialogue  
13 would have come from in the possibility of,  
14 what if you purposely release VCM and it  
15 doesn't ignite. Then there'd be that  
16 possibility of an uncontrolled vapor cloud  
17 finding an ignition source.

18 So that would have been the  
19 context of any such question by somebody.

20 Q. So I want to make sure I  
21 understand that.

22 In the course of that  
23 discussion, it was brought to you as a  
24 question, how can we ensure ignition of the  
25 VCM once it's released from the tank car.

1 Correct?

2 A. Yes.

3 MR. LEVINE: Objection.

4 QUESTIONS BY MR. GOMEZ:

5 Q. And in the course of that  
6 discussion, did anyone raise the concern that  
7 if -- specifically raise the concern that if  
8 the VCM failed to ignite, there could be the  
9 formation of a vapor cloud that would find an  
10 ignition source and then explode?

11 A. I don't remember their exact  
12 wording of their exact question, but you  
13 have, in fact, captured the essence of the  
14 question of -- of the question that we're  
15 asking about how can it be assured for  
16 ignition. That was certainly a possibility  
17 if it wouldn't have ignited.

18 So that was the spirit of the  
19 question, just maybe not --

20 Q. No, I appreciate that.

21 And I guess the follow-up then  
22 is, if it wasn't specifically discussed, "it"  
23 being the potential for unignited VCM to lead  
24 to a vapor cloud explosion, do you know if  
25 Governor DeWine appreciated the spirit of

1       that question, as you -- as you described it?

2                   MR. HANSON:   Objection.

3                   MR. LEVINE:   Objection.

4                   THE WITNESS:   I can't -- yeah,  
5                   I don't know what he's thinking.   I  
6                   can't testify to what he may or may  
7                   not have been thinking.

8       QUESTIONS BY MR. GOMEZ:

9               Q.       So as you sit here today, you  
10           don't know if at any point in time Governor  
11           DeWine was made aware of the potential for a  
12           vapor cloud explosion in the course of the  
13           vent and burn operation?

14                   MR. HANSON:   Objection.

15                   MR. LEVINE:   Objection.

16                   THE WITNESS:   No, he -- he was  
17                   in that room when that question was  
18                   asked, and he was part of that  
19                   conversation.   I just don't remember  
20                   if he was the one that asked the  
21                   question.

22       QUESTIONS BY MR. GOMEZ:

23               Q.       Okay.   So you're assuming that  
24           he heard that conversation and understood  
25           that the risk that the question was trying to

1 address was the concept of a vapor cloud  
2 explosion?

3 MR. HANSON: Objection.

4 MR. LEVINE: Objection.

5 THE WITNESS: Whoever in the  
6 room asked the question about the  
7 redundancy of ignition and  
8 guaranteeing ignition, their  
9 question -- and when you -- when you  
10 use those words "vapor cloud  
11 explosion," that's where I'm getting  
12 my recall.

13 Whoever asked that question  
14 with the how can we guarantee  
15 ignition, their question included that  
16 dialogue. So the governor would have  
17 heard that dialogue in the framework  
18 of a question of the person that asked  
19 the question, tied to the ignition.

20 QUESTIONS BY MR. GOMEZ:

21 Q. Okay. And in the course of  
22 that same conversation that we're referring  
23 to, did you -- did you share with that group  
24 that Oxy had concerns that a vent and burn  
25 could cause an unintended vapor cloud

1 explosion?

2 MR. HANSON: Objection.

3 THE WITNESS: Again, we  
4 communicated with Norfolk Southern.

5 If Oxy had communicated that on one of  
6 the calls, we would have given them  
7 the same assurances for ignition that  
8 we gave to the person in that room  
9 that asked the same question.

10 QUESTIONS BY MR. GOMEZ:

11 Q. So you don't recall having,  
12 yourself, conversations with anyone from Oxy,  
13 whether in the field in East Palestine or  
14 Dallas, about the concern that if a vent and  
15 burn was to be authorized, a potential risk  
16 was a vapor cloud explosion?

17 A. That is a -- that's a -- it's  
18 one of the planning elements, as we plan to  
19 do things like this, that we assure adequate  
20 redundancies for ignition, to guarantee  
21 ignition to eliminate that risk.

22 Q. And in the course of planning  
23 to mitigate against that risk, did you also  
24 plan for or model the potential damage that  
25 would occur if a vapor cloud explosion took

1 place?

2 A. I'm not aware of that  
3 specific -- that would be a question for  
4 Norfolk Southern and CTH {sic}. I'm not  
5 aware of what all modeling was done by whom.

6 Q. In terms of your interactions,  
7 if any, with Chief Drabick directly, right,  
8 did any of those interactions include a  
9 discussion about the potential for a vapor  
10 cloud explosion in the course of conducting a  
11 vent and burn?

12 A. If -- if Chief Drabick was in  
13 the room at the first governor intervention  
14 in which that person asked that question, he  
15 certainly would have been part of that  
16 discussion and listening to that  
17 conversation.

18 Beyond that, as I testified  
19 earlier, I -- I didn't exactly pan the room  
20 to know who all was there. I just -- like I  
21 say, the governor was eye to eye with us the  
22 minute we walked through the door.

23 Beyond that, I can say there  
24 was no vivid conversation with the chief  
25 about that topic.

1           Q.       Beyond potentially what you  
2       just described, do you have any knowledge of  
3       whether Norfolk Southern discussed with Chief  
4       Drabick the potential for a vapor cloud  
5       explosion in the course of conducting a vent  
6       and burn operation?

7           A.       Yeah. Once again, I don't know  
8       what Norfolk Southern would have -- may or  
9       may not have communicated to him that I  
10      wasn't present for.

11          Q.       I don't think that this has  
12      been --

13                  MR. HANSON: Your co-counsel  
14      would like to shut down for the  
15      hearing.

16                  MS. KARIS: Keep going.

17                  MR. GOMEZ: I got two more  
18      questions. I promise. Hopefully.

19      QUESTIONS BY MR. GOMEZ:

20          Q.       I don't think it's been asked  
21      in the course of your two days now, but if  
22      you could, can you tell me who you  
23      understood -- individual people, who you  
24      understood to be part of unified or incident  
25      command in East Palestine?



1           A.       Well, from Friday night when I  
2       got there, certainly the fire department had  
3       their senior official. There was Ohio EPA,  
4       Pennsylvania DEP. I can't remember when I  
5       first saw someone from US EPA. I don't  
6       remember a timeline. I remember somebody  
7       from a county EMA.

8                   And again, everybody was  
9       crammed into a -- what I thought was a former  
10      firehouse. Come to find out later was a  
11      police station garage before it evolved into  
12      the church or school or school or church.  
13      And again, I can't remember the sequencing of  
14      when things moved.

15                   But -- I know it's a long way  
16      to answer your question, but...

17           Q.       You mentioned a couple of  
18      different entities. I want to make sure  
19      we're on the same page.

20                   Fire department was one, right?

21           A.       Excuse me.

22           Q.       Is that yes or no? I'm sorry.

23           A.       Oh, I'm sorry.

24           Q.       Let me ask it again.

25           A.       Yes, fire department.

1 Q. Okay. Fire department was one.  
2 Ohio EPA.

3 Yes?

4 A. Yes.

5 Q. Pennsylvania DEP.

6 Correct?

7 A. Yes.

8 Q. US EPA.

9 Right?

10 A. Yes.

11 Q. County EMA.

12 Right?

13 A. Yes.

14 Q. That would have been Columbiana  
15 County EMA?

16 A. I believe so.

17 Q. Was Norfolk Southern also part  
18 of incident command?

19 A. Yes. Sorry, I missed -- and  
20 the police department. The police chief was  
21 also there. Whatever -- it was -- I don't  
22 know if he's city or county, but the police  
23 for local East Palestine, police were  
24 represented as well.

25 Q. Okay. So that was the corpus

1 or the body of incident or unified command as  
2 you understood it.

3 Right?

4 A. To my best memory, yes, sir.

5 Q. And was it your understanding  
6 that as information flowed from SRS and SPSI  
7 to NS and then incident or unified command,  
8 that that information was reaching all of  
9 those organizations that made up unified or  
10 incident command?

11 MR. LEVINE: Objection.

12 THE WITNESS: Yeah. I mean, I  
13 communicate with my customer, and then  
14 the customer handles those kind of  
15 communications. Beyond that, I can't  
16 speculate.

17 MR. GOMEZ: Okay. Sir, thank  
18 you for your time across the last two  
19 days.

20 THE WITNESS: You're welcome.

21 MR. GOMEZ: Those are the  
22 questions I have.

23 THE WITNESS: You're welcome.

24 MR. HANSON: All right. Until

25 1:30?

1 MR. GOMEZ: Yeah, we'll go off  
2 the record.

3 MR. HANSON: Yeah.

4 VIDEOGRAPHER: Off the record  
5 at 12:54.

6 (Off the record at 12:54 p.m.)

7 VIDEOGRAPHER: We are back on  
8 the record at 12:58.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MS. HERLIHY:

11 Q. Thanks.

12 Mr. McCarty, we've talked a lot  
13 about pool fires, and they seemed to have  
14 been one of the major contributing factors to  
15 the derailment and to ultimately the  
16 decisions that were made.

17 Just want to make clear. The  
18 pool fires were not caused by any material  
19 that leaked from the VCM cars.

20 Correct?

21 A. That's correct.

22 Q. Okay. Those were not -- those  
23 were somebody else's fault; that had nothing  
24 to do with VCM?

25 A. Other products, not VCM.

1 Q. Okay. From breached railcars?

2 A. Yes.

3 Q. Okay. I'm going to go back  
4 quickly to this paperwork issue. I know  
5 you've heard it a number of times. And I  
6 already asked you a couple of questions about  
7 it, but I had one more.

8 I know you mentioned the first  
9 time you heard anybody raise any paperwork  
10 discrepancies was when Randy Keltz testified  
11 about that at the NTSB hearing.

12 A. Uh-huh.

13 Q. Have you ever heard anybody say  
14 that they made any decision or recommendation  
15 with respect to the vent and burn operation  
16 as a result of paperwork discrepancies with  
17 any of the VCM cars?

18 A. I never heard anyone say  
19 anything like that, no.

20 Q. Okay. But earlier we talked  
21 about a couple different cars, so I just  
22 wanted to make sure that that applies to all  
23 of the VCM cars.

24 Right?

25 A. That's a true statement.

John Andrew McCarty

1 Q. Okay. Great.

2 And then when you were  
3 mentioning the group of your guys that you  
4 talked with last night, you had a -- one  
5 conversation that both of the Mikes, Mike  
6 Kline and Mike Burket, were on that call with  
7 you.

8 Right?

9 A. Yes.

10 Q. So it was the three of you  
11 together?

12 A. Yes.

13 Q. With the other individuals that  
14 you talked with, did you talk with them  
15 individually or as a group call?

16 A. Individually.

17 Q. So each one of those people you  
18 had a phone call with individually?

19 A. Yes.

20 MS. HERLIHY: Okay. Those are  
21 all my questions. So, thank you.  
22 Appreciate it.

23 THE WITNESS: You're welcome.

24 MS. HERLIHY: Brian?

25 MR. SWANSON: Nothing more for

1 Trinity.

2 MS. HERLIHY: Okay. Thank you.

3 MR. HANSON: And we'll just on  
4 the record ask that it be designated  
5 confidential under the protective  
6 order.

7 MS. HERLIHY: Okay. All right.

8 VIDEOGRAPHER: Off the record  
9 at 1 p.m.

10 (Deposition concluded at 1:00 p.m.)

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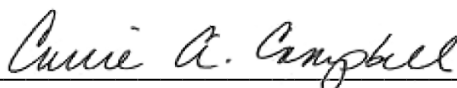
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CERTIFICATE

I, CARRIE A. CAMPBELL, Registered Diplomat Reporter, Certified Realtime Reporter and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, John Andrew McCarty, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



CARRIE A. CAMPBELL,  
NCRA Registered Diplomat Reporter  
Certified Realtime Reporter  
California Certified Shorthand  
Reporter #13921  
Missouri Certified Court Reporter #859  
Illinois Certified Shorthand Reporter  
#084-004229  
Texas Certified Shorthand Reporter #9328  
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Louisiana Certified Court Reporter  
#2021012  
Notary Public  
Dated: January 26, 2024



INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it. You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

John Andrew McCarty

ACKNOWLEDGMENT OF DEPONENT

I, \_\_\_\_\_, do  
hereby certify that I have read the foregoing  
pages and that the same is a correct  
transcription of the answers given by me to  
the questions therein propounded, except for  
the corrections or changes in form or  
substance, if any, noted in the attached  
Errata Sheet.

\_\_\_\_\_  
John Andrew McCarty

DATE

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

John Andrew McCarty

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John Andrew McCarty

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**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: EAST PALESTINE TRAIN  
DERAILMENT**

**CASE NO. 4:23-CV-00242-BYP  
JUDGE BENITA Y. PEARSON**

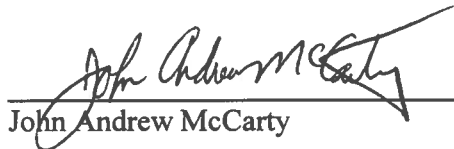
**ERRATA TO THE DEPOSITION TRANSCRIPT OF JOHN ANDREW MCCARTY  
TAKEN ON JANUARY 24 AND JANUARY 25, 2024**

I have reviewed the transcript of my testimony of January 24 and January 25, 2024, and hereby make the following changes in form and/or substance:

<b>PAGE</b>	<b>LINE(S)</b>	<b>CHANGE</b>	<b>REASON FOR CHANGE</b>
13	20	“Street Smart Chemistry” to “street smart chemistry”	Clarification
17	3	“It’s” to “Its”	Transcription error
24	23	“that’s very a” to “that’s a very”	Transcription error
28	12	“a broad, not” to “a broad -- not”	Clarification
33	7	Delete comma after “dry”	Clarification
33	15	Delete comma after “people”	Clarification
45	15	“started” to “start it”	Transcription error
93	1	“me, that” to “me was that”	Clarification
146	3	Delete “in” after “not”	Clarification
187	20	“where of” to “to be aware of”	Clarification
197	5	“we like” to “we were like”	Clarification
214	3	“PRD off {sic}” to “PRD went off”	Clarification
319	2	“on” to “in”	Clarification
323	18	“deal” to “detail”	Transcription error

PAGE	LINE(S)	CHANGE	REASON FOR CHANGE
325	10	"that I" to "that because I"	Clarification
332	16	"get to" to "get the"	Clarification
386	16	"drawn" to "job"	Transcription error
389	5	"CTH {sic}" to "CTEH"	Clarification
413	8	"Makazlit {phonetic}" to McHazlett	Clarification
421	25	"polymer" to "polymerize"	Clarification
523	2	"Filby, found" to "Filby, we found"	Clarification
532	10	"of probability" to "or probability"	Clarification
562	12	"ours" to "others"	Transcription error
577	3	"Brennan" to "Brenon"	Transcription error
643	13	"the" to "of a"	Clarification
653	18	"Carol" to "Carroll"	Transcription error
703	4	"CTH {sic}" to "CTEH"	Clarification

I, John Andrew McCarty, read the foregoing deposition and hereby state that the foregoing is true and correct, except as noted herein.

  
 John Andrew McCarty

Feb. 23, 2024  
 Date